

Publications of the
Carnegie Endowment for International Peace
Division of International Law
Washington

THE CLASSICS OF INTERNATIONAL LAW

EDITED BY
JAMES BROWN SCOTT

Member of the Institute of International Law
President of the American Institute of International Law

DE DOMINIO MARIS DISSERTATIO

BY CORNELIUS VAN BYNKERSHOEK

- I. Introduction by James Brown Scott.
- II. A Photographic Reproduction of the Second Edition (1744).
- III. A Translation of the Text, by Ralph Van Deman Magoffin.
- IV. An Index of Authors Cited and a List of Errata in the 1744 edition prepared by Herbert Francis Wright.

*This volume constitutes No. 11 of
"The Classics of International Law."
A list of the numbers already published
is given at the end of this volume.*

P R E F A C E

The republication of the classic works connected with the history and development of international law was undertaken by the Carnegie Institution of Washington in 1906, at the suggestion of the undersigned, then Solicitor for the Department of State, under whose supervision as General Editor the series has since been published. On January 1, 1917, the project was transferred to the Carnegie Endowment for International Peace and the publication of the series is being continued by the Endowment's Division of International Law.

The present volume, Bynkershoek's *De Dominio Maris*, is edited with an Introduction by the General Editor of the series. The English translation of the text of Bynkershoek's treatise has been made by Professor Ralph Van Deman Magoffin.

The reasons for including Bynkershoek's treatise are sufficiently set forth in the Introduction. The original text is exceedingly difficult to procure and has not hitherto been translated into English. The photographic reproduction places the work within the hands of any and all countries, and Professor Magoffin's faithful translation of a text which abounds in difficulties makes its mastery an easy matter to the English-speaking world.

One reason for republishing the classics of international law is the difficulty of procuring the texts in convenient form for scientific study; the libraries in the United States have been searched with the result that few of the earlier works were to be found. Another reason is that some of the works selected for republication have never been translated into English. The American publicist is therefore at a disadvantage in consulting works of admitted authority, and when found they are, as it were, sealed books to all but trained Latinists. The specialist is thus forced to rely upon summary statements and references to them to be found in treatises on international law, or is driven to examine them in European libraries, often a difficult task, while the general reader is practically barred from the stores of knowledge locked up in the earlier works on the law of nations. The same difficulty exists in Latin America, Japan, and in a lesser degree in many European countries.

Eminent publicists, European and American, who have been consulted as to the usefulness of the plan to republish the classics, have indorsed the project and have pledged their personal cooperation. The works to be included in the series have not only been approved but suggested by them, so that the undertaking is international in scope, in selection, and in execution.

The underlying principle of selection has been to reissue those works which can be said to have contributed either to the origin or to the growth of international law and the term classic has been used in the broad rather than in the narrow sense, so that no work will be omitted which can be said to have contributed to the origin or growth of the law of nations. The masterpieces of Grotius will naturally be the central point in the series, but the works of his leading predecessors and successors will likewise be included. The text of each author will be reproduced photographically, so as to lay the source before the reader without the mistakes which creep into a newly printed text. In the case of the early authors the photographed text will be accompanied by a revised text whenever that course shall seem desirable. An introduction will be prefixed to each work, giving the necessary biographical details and stating the importance of the text and its place in international law; tables of errata in the original will be added, and notes deemed necessary to clear up doubts and ambiguities or to correct mistakes in the text will be supplied. Variations in successive editions of the text published in the author's lifetime will be noted, but little or nothing in the nature of historical commentary will be furnished.

Each work will be accompanied by an English version made expressly for the series by a competent translator.

It is hoped that the series will enable specialists as well as general readers to trace international law from its faint and unconscious beginnings to its present ample proportions and to forecast with some degree of certainty its future development into that law which Mirabeau tells us will one day rule the world.

JAMES BROWN SCOTT,
General Editor.

Washington, March 1, 1923.

DE DOMINIO MARIS DISSERTATIO

BY

CORNELIUS VAN BYNKERSHOEK

Jurisconsult and Presiding Judge

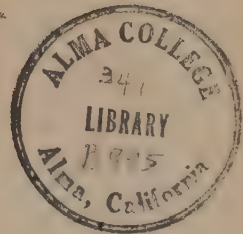
IN ONE VOLUME

A PHOTOGRAPHIC REPRODUCTION
OF THE SECOND EDITION (1744)

WITH AN ENGLISH TRANSLATION
BY RALPH VAN DEMAN MAGOFFIN

AND AN INTRODUCTION
BY JAMES BROWN SCOTT

Property of
CLgA
Please return to
**Graduate Theological
Union Library**



NEW YORK
OXFORD UNIVERSITY PRESS
AMERICAN BRANCH: 35 WEST 32ND STREET
LONDON, TORONTO, MELBOURNE AND BOMBAY

1923

18962

COPYRIGHT 1923
BY THE
CARNEGIE ENDOWMENT FOR INTERNATIONAL PEACE

PRINTED IN THE UNITED STATES OF AMERICA
BY GIBSON BROS., PRINTERS, WASHINGTON

CONTENTS

	PAGES
Introduction	11-22
Translator's Prefatory Remarks	28
Translation of the Second Edition (1744) of De Dominio Maris Dissertatio	23-105
Photographic Reproduction of the Second Edition (1744) of De Dominio Maris Dissertatio	351-424
Errata in the Edition of 1744	425
Index of Authors Cited by Bynkershoek	427-429

The gap in pagination between pages 108 and 351 is explained on page 107.

DE DOMINIO MARIS
DISSERTATIO

BY CORNELIUS VAN BYNKERSHOEK
Jurisconsult and Presiding Judge

INTRODUCTION

BY JAMES BROWN SCOTT
Member of the Institute of International Law
President of the American Institute of International Law

INTRODUCTION

In 1702 there was published the original edition, and in 1744, the second and revised edition, of a dissertation, entitled *De dominio maris*, the first venture of one Cornelius van Bynkershoek in the field of international law, in which he was to acquire distinction as one of the recognized founders of the law of nations.

Born of a family of merchants on 29 May 1673, at Middelburg, the capital of Zeeland, he studied the humanities at the University of Franeker, in Friesland, until 1693, when he began to devote himself to the study of Roman law. Such success did he attain in this pursuit that the celebrated professor of jurisprudence, Ulrich Huber, in one of his dissertations calls him "eruditissimus juvenis." He then became an advocate at The Hague, totally engrossed in his professional labors, except when from time to time he turned aside by way of diversion to publish dissertations on various subjects of Roman law. Thus, in 1702, he followed the study of the law ἀξιῶσις (9), ff., *De lege Rhodia de iactu*, with the dissertation mentioned above, *De dominio maris*, which, opposing the English pretensions of Gentili and Selden on the sovereignty of the seas, took up and accentuated the doctrine, defended by Grotius and Pufendorf, of the common right of nations to liberty of navigation, of commerce and of fishing on the high sea.

Nevertheless, as in the case of Grotius, the bar did not hold him long; he was successively judge (1703) and president (1704-1743) of the Supreme Court of Appeals, sitting at The Hague, for the provinces of Holland, Zeeland and West Friesland. These functions gave him the special knowledge of international maritime law which, independently of the question of method, renders particularly valuable, as an historical document, the first book of the *Quaestiones juris publici*, published in 1737. This book, entitled *De rebus bellicis*, failing to fulfil all the nor-

mal promises of its title, does not constitute a complete treatise on war, but has in fact, in comparison especially with the great work of Grotius, the considerable and superior merit of being, on the most debated questions of the time as well as in the important matter of relations between belligerents and neutrals, an extremely clear description and explanation of the current maritime practice and conventional law. Being, as it is, a collection of contemporary usages or, one might say, a catalogue of treaties, it merits the praise bestowed by Wheaton, when he says: "The plan which he adopted was well calculated to do justice to the subject."¹ The scope of the book may in some measure be gauged from the titles of the following selected chapters:

- Chapter IV.—How and when ownership is established in captured property.
- Chapter V.—On the recapture of movable property and especially of ships.
- Chapter IX.—How war affects neutrals.
- Chapter XI.—Whether it is lawful to convey goods to besieged cities, camps and ports.
- Chapter XII.—Shall non-contraband goods be condemned because of contraband goods?
- Chapter XIII.—On goods of neutrals found in enemy vessels.
- Chapter XIV.—On enemy goods found in neutral vessels.
- Chapter XXI.—Whether it is lawful to insure enemy property.
- Chapter XXII.—Whether it is lawful to recruit soldiers in a neutral country.

The second book of the *Quaestiones juris publici*, entitled *De rebus varii argumenti*, adds materially to the subject of rights and duties of ambassadors, which Bynkershoek had previously treated in his dissertation, *De foro legatorum* (1721), since it contains a discussion upon such questions as: "Who may be sent as ambassadors, including whether it is right and legal to employ women as ambassadors," "Whether an act of an ambassador is valid when contrary to his secret instructions," "Whether an ambassador may receive gifts," "On the observances of public agreements and whether there are any tacit exceptions," "Whether foreigners should be excluded from offices of State."

¹ HENRY WHEATON, *History of the Law of Nations in Europe and America from the Earliest Times to the Treaty of Washington, 1842* (New York, 1845), p. 193.

These works clearly demonstrate the range and extent of Bynkershoek's knowledge and training, but it is perhaps on the formula which he created for the extent of marginal seas that his fame chiefly depends. This formula is expressed first in his *De dominio maris*, and is repeated thirty-five years later in the first book of his *Quaestiones juris publici*, wherein he affirms the principle that "territorial dominion ends where the power of weapons terminates."

The Roman law makes an important distinction between seas and rivers as regards ownership. The sea is among those things which are "common to all by the natural law," while rivers are "public property, of which the ownership belongs to the people or commonwealth." With the increasing importance of maritime commerce during the Middle Ages, that is, from the fall of the Roman Empire to the fall of Constantinople, it was natural that claims be advanced by various states to the sovereignty of certain seas useful for purposes of trade, since it had become more and more one of the chief factors in the production of public wealth.

In this way it happened that, at the beginning of the seventeenth century, probably no part of the European seas was looked upon as free from proprietary claims of some power. At any rate, most of them were actually subjected in a greater or less degree to sovereign domination. Venice levied a tax on all ships plying the Adriatic. The Ligurian Sea belonged to Genoa. England not only asserted her dominion over the North Sea and the Channel, but more vaguely claimed the Bay of Biscay. Finally, the Baltic was shared between Denmark and Sweden. These claims were in the main founded upon services rendered to commerce, such as protection from the attacks of pirates, and were of no less advantage to foreign traders than to native citizens.

The case of Venice is typical. In 1269 she began to exact a heavy toll from all vessels navigating in the Adriatic north of Ravenna on the west and the Gulf of Fiume on the east. The citizens of Treviso, Padua, Ferrara, Ravenna, Bologna and Ancona were subject to this tax as well as the Genoese, the Pisans, the Sicilians and the Levantines. After paying the impost for

a few years, Bologna and Ancona took up arms to free themselves from the burden, but, the issue of their wars being unfortunate, they were compelled formally to acknowledge the sovereignty of Venice over the Adriatic, and to consent to pay the dues which she demanded.

So, little by little, protests arose against the abuse of such tolls and the overlordship of the seas by individual states or sovereigns was denied. It was then that the notion of the territorial or marginal sea was formed. States which pretended to the sovereignty of the seas ceased to claim the more distant waters in order to hold to the nearer. It is not the whole sea, but the sea near the coasts which becomes then the only object of sovereignty. The jurists of the Roman law, who did not accept the appropriation of the entire sea, preserved for the states and sovereigns that part of the waters which, threading the shore like a river, can, like it, enter, according to Roman law, into the bosom of the state. On this principle, they began to limit the right of the State to the approaches to the coast. Some, like Bartolus, limited it to 100 miles; others, like Bodin, to 60 miles; and still others to a less distance. The question of knowing whether the sea should be open or closed disappeared before that of knowing whether the territorial sea, alone closed, should be more or less in extent.

Then began, as Professor Nys¹ terms it, "a battle of books," particularly between the Dutch and English writers, though not confined to them. The anonymous publication in 1608 of the celebrated *Mare liberum* of Hugo Grotius was followed in quick succession by replies and counter-replies. First appeared *The Abridgement of all the Sea-Lawes* (1613) by the Scotchman, William Welwod. Grotius prepared, but did not publish, a reply, which has only been discovered within the last half-century. In 1615, Welwod returned to the charge, this time in Latin, with his *De dominio maris jurebusque ad dominium praecipue spectantibus assertio brevis ac methodica*. Two or three years later, the distinguished English lawyer, scholar and publicist, John Selden, wrote his ponderous *Mare clausum*, although it was not published until 1635. The controversy echoed

¹ ERNEST NYS, *Etudes de droit international et de droit politique* (2nd series, Brussels, 1901), pp. 260-272.

and reechoed throughout the seventeenth century, extending to Spain and Portugal and even to Italy.¹

It is with Bynkershoek's earlier and smaller work that we are primarily concerned here. In this little treatise, his thesis, or what may be figuratively called the first fruits of a sturdy stock, is twofold: first, that the ocean, or high sea, beyond cannon-shot from the shore, is subject to occupation and therefore ownership, although, in fact, it has not been occupied and has not therefore been brought under ownership; second, that a state can take possession of the waters washing its shores and hold such adversely against the world, as far as it can control and make that possession effective by cannon from its shores,—that therefore, to the extent of the cannon-shot from shore, marginal waters are subject to possession, occupation and, therefore, ownership.

In the days of Bynkershoek, a cannon carried approximately three miles; hence the statement that a nation may occupy and exercise ownership over waters three miles within low-water mark. This was the solution proposed by the young publicist; this was the solution accepted by the nations; this is the solution still obtaining, unless modified by expressed consent.

Bynkershoek's contention is a compromise between two extremes: first, that the high seas actually can be and are occupied and, therefore, are subject to ownership by the occupying power; second, that the high seas are not subject to occupation and ownership by any power. Bynkershoek held, as stated, that the high seas could be occupied, and he states expressly that in the palmy days of Rome the Mediterranean was a *mare clausum*, because the Romans did, in fact, and therefore in law, seize, possess, occupy and own the Mediterranean, by fleets which they maintained in its waters. The middle position taken by Bynkershoek in this connection is that he accepts the possibility of ownership of the high seas, but he agrees with the opponents in that he holds it has not been so acquired. In this regard he is a partisan of the *mare apertum* or open seas. But even here, he compromises, holding against Grotius, the extreme advocate of

¹ Cf. NYS, *op. cit.*; also THOMAS C. WADE's introductory essay to his edition of SIR JOHN BOROUGHS, *The Sovereignty of the British Seas* (Edinburgh, 1920), pp. 1-35.

the "Freedom of the Seas," in his little book of that title, that the marginal seas to the extent of a cannon-shot can be owned by the state whose shores are washed by the waters and which possesses the cannon.

Bynkershoek's great countryman, Grotius, had difficulty in squaring fact with theory, and discarding the extreme doctrine of his youthful essay—for the *Mare liberum* was the first fruits of his genius, just as *De dominio maris* was that of Bynkershoek—the Grotius of *De jure belli ac pacis* (1625) admitted the possibility of extending the jurisdiction of a state over a portion of the sea adjacent to its coasts. He had trouble, however, finding the principle according to which the jurisdiction of a state should extend beyond its shores into the open or high seas. In the earlier treatise, he had reasoned that ownership resulted from occupation, which involved seizure and possession. Therefore, only things could be owned which could be seized and held in possession, such as movable property, and immovable property only if it could be possessed either through "the erection of buildings or some determination of boundaries, such as fencing in."¹ The ocean consisted of flowing waters which could not be seized; it was without fixed boundaries because it was "limitless." Again, only property could be seized and occupied which an individual could use and of which he could hold exclusive possession, or, to quote his own language:

Two conclusions may be drawn from what has thus far been said. The first is, that that which cannot be occupied, or which never has been occupied, can not be the property of any one, because all property has arisen from occupation. The second is, that all that which has been so constituted by nature that although serving some one person it still suffices for the common use of all other persons, is today and ought in perpetuity to remain in the same condition as when it was first created by nature.²

Limiting ownership to things which may be seized, used and, if necessary, consumed by a private individual, and denying ownership to things which are destined for common use, Grotius maintains that, "the sea can in no way become the private property of any one, because nature not only allows but enjoins its

¹ HUGO GROTIUS, *Mare liberum*, text with English translation by R. V. D. MAGOFFIN (Washington, 1916), p. 26.

² *Ibid.*, p. 27.

common use.”¹ If, however, the sea could be enclosed, it would necessarily follow from this line of reasoning, that the sea would to this extent be subject to private ownership or to public ownership, which is, according to Grotius, acquired in the same way. Therefore, he says: “if any small portion of the sea can be thus occupied, the occupation is recognized”²; and his conclusion on the whole subject in so far as it is material to the present purpose is that

neither a nation nor an individual can establish any right of private ownership over the sea itself (I except inlets of the sea), inasmuch as its occupation is not permissible either by nature or on grounds of public utility.³

He did not find it necessary to define inlets of the sea, as he was dealing with the ocean; but as rivers could be occupied, it would seem that inlets could, according to this doctrine, be occupied and therefore owned.

Such is, in summary form, the doctrine of *Mare liberum*. In the masterpiece, *De jure belli ac pacis*, he had occasion to reconsider the subject, which he did in the light of experience and with the moderation which comes with years. First he says:

Rivers may be held as by occupation, though neither their upper nor lower extremity be included in the territory; but cohere with superior or inferior water, or with the sea. It is sufficient that the greater part, that is, the sides, are inclosed with banks, and that a river is something small in comparison with the land.⁴

It necessarily follows, as Grotius states, that

a portion of the sea also may be occupied by him who possesses the land on each side: although it be open at one end, as a bay, or at both, as a strait; provided it be not such a portion of the sea as is too large to appear part of the land.⁵

Putting out to sea, as it were, he continues:

Since a portion of the sea may become part of a private estate, namely, if it be included in the estate, and so small as to seem part of it, and if the Law of Nature does not prohibit this; why should not a portion of the sea included within the shores of a people or of several peoples be the property of those to whom the shores belong, provided that the size of that portion of the sea compared with the territory be not larger than the inlet of the sea compared with the estate?⁶

¹ *Ibid.*, p. 30.

² *Ibid.*, p. 31.

³ *Ibid.*, pp. 36-37.

⁴ HUGO GROTIIUS, *De jure belli ac pacis*, text with English translation (adapted) by WILLIAM WHEWELL (Cambridge, 1853), vol. I, p. 259.

⁵ *Ibid.*, p. 259.

⁶ *Ibid.*, p. 262.

In the case of what we would call "marginal waters," the intention to occupy would have to be evidenced, as Grotius says, by "some external act [as the presence of ships] by which the occupation may be understood to take place," and his conclusion on the whole subject is that

The lordship over a portion of the sea is, it would seem, acquired in the same way as other lordships—that is, as we have said above, by way of persons and by way of territory. By way of persons, when a fleet, which is a sea army, is established somewhere in the sea; by way of territory, in so far as those who sail in that part of the sea nearest the land can be held in restraint from the land, no less than if they were found upon the land itself.¹

At this point, Bynkershoek takes up the doctrine and supplies the method by which possession, occupation, ownership or jurisdiction may be acquired, suggesting cannon placed on shore as the means of acquiring possession, occupation, ownership or jurisdiction, and the range of the cannon as the means of determining the extent of such possession, occupation, ownership or jurisdiction of waters adjoining the shore:

I should think, therefore [he says] that the possession of a maritime belt ought to be regarded as extending just as far as it can be held in subjection to the mainland; for in that way, although it is not navigated perpetually, still the possession acquired by law is properly defended and maintained; for there can be no question that he possesses a thing continuously who so holds it that another can not hold it against his will. Hence we do not concede ownership of a maritime belt any farther out than it can be ruled from the land, and yet we do concede it that far; for there can be no reason for saying that the sea which is under some one man's command and control is any less his than a ditch in his territory.²

And after considering the various means of fixing the extent of the belt, he says:

Wherefore on the whole it seems a better rule that the control of the land [over the sea] extends *as far as cannon will carry*; for that is as far as we seem to have both command and possession.³

¹ *Ibid.*, pp. 266–267; cf. H. G. CROCKER, *The Extent of the Marginal Sea* (Washington, 1919), p. 64.

² See below, p. 43.

³ See below, p. 44.

He recognized the fact that the means of compelling control had to be changed in the past. He therefore spoke of his own day, leaving the future to take care of itself, saying:

I am speaking, however, of our own times, in which we use those engines of war; otherwise I should have to say in general terms that the control from the land ends where the power of men's weapons ends; for it is this, as we have said, that guarantees possession.¹

If Bynkershoek were writing in the year of grace 1921, he would doubtless call attention to the fact that in 1702, when a certain dissertation, *De dominio maris*, was published, the range of cannon was a league, or three marine miles, and that, therefore, ownership could be acquired to that extent only, but as the range of cannon has vastly increased, the maritime belt either has, or might be increased *pari passu*; and he would be right.

The question has much troubled publicists, whether the maritime belt as defined by Bynkershoek is to be regarded as a part of the state in the sense in which its territory is so considered, or whether, instead of ownership, the state merely exercises jurisdiction over it. The nations, however, are not troubled by niceties of this kind. They assert and maintain their authority within marginal waters; exercising ownership when it is to their interest, as in the matter of fisheries, for example, and exercising jurisdiction in civil and criminal matters therein, if jurisdiction in these cases is to be considered as something separate and distinct from ownership.

Indeed, they do not always confine their claims within the range of the Bynkershoek cannon, but they claim at least that distance. However this may be, the reason for the doctrine was stated by Queen Elizabeth long ago, when she denied the right of Spain to debar her subjects from trade or from the right to

freely navigate that vast ocean, seeing the use of the Sea and ayre is common to all. Neither can any title to the Ocean belong to any people or private man; forasmuch as neither Nature nor publike use permitteth any possession thereof.²

¹ See below, p. 44.

² WILLIAM CAMDEN, *The Historic of the Most Renowned and Victorious Princesse Elizabeth, Late Queen of England* (London, 1630), Year 1580, p. 117

And the extent to which nations may and do exercise their jurisdiction over waters within or wholly without their territory has been finely stated by Mr. Chief Justice Field, in delivering the opinion of the Supreme Court of Massachusetts in the case of *Commonwealth v. Manchester*:

It has often been a matter of controversy how far a nation has a right to control the fisheries on its seacoast, and in the bays and arms of the sea within its territory, but the limits of this right have never been placed at less than a marine league from the coast on the open sea; and bays wholly within the territory of a nation, the headlands of which are not more than six geographical miles apart, have always been regarded as a part of the territory of the nation in which they lie. More extensive rights in these respects have been and are now claimed by some nations; but, so far as we are aware, all nations concede to each other the right to control the fisheries within *a marine league* of the coast, and in bays within the territory the headlands of which are not more than two marine leagues apart.¹

JAMES BROWN SCOTT.

Washington, February 1, 1921.

¹ 152 *Massachusetts Reports*, pp. 236 ff.

DE DOMINIO MARIS
DISSERTATIO

BY CORNELIUS VAN BYNKERSHOEK

Jurisconsult and Presiding Judge

THE TRANSLATION

BY RALPH VAN DEMAN MAGOFFIN

Head of the Department of Classics, New York University

[*The Title-Page of the Edition of 1744*]

THE MINOR WORKS
OF
CORNELIUS VAN BYNKERSHOEK,
JURISCONSULT AND PRESIDING JUDGE

Formerly published separately, now published together, with
the revision and some additions of the Author

The page which follows the General Preface contains the Index of Works

Second Edition



LEYDEN
AT THE HOUSE OF JOHAN VAN KERCKHEM
1744

With the Privilege of the Estates of Holland and West Friesland

[*Index of the Edition of 1744*]

INDEX OF THE MINOR WORKS

I.	Single book, on law <i>lecta</i> (40), <i>Dig.</i> , De rebus creditis si certum petetur	1
II.	Dissertation on agreements immediately added to contracts of strict law	115
III.	Diatribes on the author or authors of the so-called Authentica	179
IV.	Literary contest with Alexander Arnold Pagenstecher, Professor of Law at Groningen, on the author or authors of the Authentica	221
V.	Single book, on law <i>ἀξιῶσις</i> (9), <i>Dig.</i> , De lege Rhodia de iactu	251
VI.	Dissertation on the sovereignty of the sea	351
VII.	Single book, on the forum of ambassadors, in civil as well as criminal cases	425

[Only No. VI is reproduced here.]

THE DISSERTATION
ON THE SOVEREIGNTY OF THE SEA
OF
CORNELIUS VAN BYNKERSHOEK,
Jurisconsult and Presiding Judge

TRANSLATOR'S PREFATORY REMARKS

This and the preceding treatise (On the Rhodian Law) in the Latin original are dedicated "to the illustrious gentleman, Cornelius van Eck, Jurisconsult and Professor," Bynkershoek's teacher and friend, whom he characterizes as his "deus ex machina" in his dedicatory letter, dated September 20, 1702, and printed on pages 253-254 of the 1744 edition, but not reproduced here.

The Latin words *jus gentium* have been uniformly rendered in this translation by "law of nations." The reader is cautioned to bear this in mind, so that he will not read a modern meaning into this phrase.

The "Conspectus" or digest appearing on pages 416-424 of the 1744 edition has been distributed throughout the text of this translation and appears in italics at the beginning of the context to which the individual parts refer.

All the material which stands outside of brackets represents the work of Bynkershoek himself, while the translator is responsible for the additions and explanations added in brackets, especially in the footnotes. One of the most frequent additions made is the equivalent in the modern method of citing the *Corpus Juris Civilis* for the method employed by Bynkershoek in common with the old Civilists.

Bynkershoek's citations, with very few exceptions, have been checked with the original sources, use having been made, where possible, of the *Loeb Classical Library*. When no revised text was available, efforts were made to locate the passages in the edition probably used by Bynkershoek himself.

The translator is indebted to his colleague, Wilfred Pirt Mustard, Ph.D., D.Litt., Professor of Latin in The Johns Hopkins University, for much valuable assistance in the translation of the first four chapters, and in locating the various classical allusions and quotations—many of them wrongly cited in the Latin text.

I am taking up a question which has been the cause of more than one war, and over which even scholars have fought with varying favor of Mars. And yet it would be unnecessary to inquire into the sovereignty of the sea any more than of the land, if the empty twaddle of many people did not shed much obscurity upon it. And therefore I have never been more surprised at anything than that in the century just past the foremost men in jurisprudence and in literature could have divided so sharply into opposing camps and raised such mighty commotions over a matter which seems easy enough to settle; at least, it is easy enough, if you consider the matter itself and not the opinions which are cited—perhaps the half-digested opinions of some poet or other, or of someone of that sort. But do you know why men took such different stands? Because some were led astray by their patriotic feelings, some by the tempting vision of commercial freedom, some by a desire to curry favor, some, finally, by the offer of rewards by their state. My own discussion of the subject is prompted by no expectation of reward, no fear of giving offense, no prejudice; and I shall examine not only the freedom, but also the sovereignty of the sea. For what I hold is this: it is possible for the sea to be brought under sovereignty as completely as anything else in the world, and yet there is no sea today that is held under the control of any one ruler, except where the land happens to dominate it. I see “swarms of foes opposed to me”¹; but it will not be hard to make my way through them, once the origin of every kind of sovereignty has been fixed. I shall go back and begin my argument with that; in this way the contrivances which I should have to overthrow will collapse of their own weight. If I cared to go into all the details of my subject, I should have on my hands, not a “dissertation,” but a regular volume. Let me, therefore, state the actual situation briefly and as plainly as possible, and either justify it from international practice or, if that practice tells against it, condemn it; and let me proceed without citing the opinions of other people at great length, and without refuting them, except now and then and in an indirect way. As to the importance of this question, it would be idle on my part to say anything further by way of preface.

¹ [Cf. HORACE, *Odes*, bk. IV, 9, ll. 43-44: “per obstantis catervas | explicuit sua victor arma,” and bk. III, 20, ll. 5-6: “cum per obstantis iuvenum catervas | ibit.”]

It has been the practice of commentators to take it up in the form of a note on the l. ἀξιῶσις, ff., *De lege Rhodia de iactu*,² though that is not the proper place, as may be seen from what I have just said on the matter in my treatise on that law. Still, my reader, nothing forbids your being agreeable to this appendage, since it makes no difference to me, and perhaps makes none to you, whether what I have decided to say about the sovereignty of the sea is stated here or somewhere else. Farewell.

² [= *Dig.*, 14, 2, 9, which is an excerpt from VOLUSIUS MAECIAN.]

³ [The treatise mentioned in the text above immediately precedes the *De dominio maris* in the original Latin volume.]

THE DISSERTATION
ON THE SOVEREIGNTY OF THE SEA
OF

CORNELIUS VAN BYNKERSHOEK,
Jurisconsult and Presiding Judge

CHAPTER I

353

CONCERNING THE ORIGIN OF OWNERSHIP

Why ownership began with natural possession, and how natural possession gave a special right.

Since before there was a distinction of ownerships, by virtue of which single individuals might have authority over anything, it was a law of nature, and it still is, that nothing is moved except by something stronger than itself, Nerva is right in observing¹ that "ownership of property began with natural possession." For on this principle it was recognized that other things being equal the position of the possessor was the better; and therefore that a thing held could not be taken away, except by a person who had a better right thereto; which is to say, that it could not be taken away by anyone. For in regard to such a thing all men were on the same footing, since

Propriae telluris erum natura neque illum
Nec me nec quemquam statuit.
(Nature hath decreed nor him nor me
Nor anyone as master of the earth
In his own right.)²

By "ownership" Nerva means a special right of possession, from which a man can not be dislodged except by an injustice. And as that right *began* with natural possession, so it continued only during the possession of the thing.

¹ L. 1, § 1, ff., *De acquirenda vel amittenda possessione* [= *Dig.*, 41, 2, 1, § 1, which is an excerpt from PAULUS].

² [HORACE, *Satires*, bk. II, 2, l. 129-130.]

By a law of nature ownership and possession are on the same footing; when the latter is lost, the former also is lost.

Ownership and possession went side by side (*pari passu*) and
 354 the seizure of ancient times gave only a right of detention, which was not at all different from the right of holding separately.

Since, however, that right did not extend beyond detention, if detention was lost, the property would revert to its ancient status, as both Nerva and Paulus seem to have noted.³ For there one may see that a distinction is clearly made between occupation in ancient times and modern occupation; that is, nowadays *res nullius* when occupied pass to the ownership of the occupant, so as to become completely his own; whereas in ancient times, by natural seizure, they were regarded as the special property of those who seized them, not otherwise than if they were held corporally, and only so long as that detention lasted.

There is a trace of this right remaining in the case of those things which in the practice of the state have not been reduced to ownership. Several passages from the Digest are explained.

And there is a trace of this right remaining in the case of those things which in the practice of the state have not been reduced to ownership. For example, if I build a house on the shore, I get absolute control of the ground, but if the house is destroyed, and my possession thus lost, "the place, as if by right of postliminium, reverts to its original status."⁴ Moreover, mere seizure could not have carried with it a still further extension of some one man's right; because the same thing would belong *pro indiviso* to everybody alike.

What is proved by ancient or modern occupation? Ownership does not extend beyond corporal detention except by agreement, and that in each state is a business belonging to the citizens. Ownerships without actual possession do not seem to have been recognized except by civil law.

For such an extension, therefore, an agreement was necessary whereby people would renounce the right which they had by nature, for, otherwise, each man would have at once taken possession of a property which another had seized but did not straightway occupy.

³ In the above-mentioned § 1.

⁴ L. 5, § 1, and l. 6, pr., ff., *De divisione rerum* [= Dig., 1, 8, 5, § 1, and Dig., 1, 8, 6, pr., from which the passage quoted above is taken; the former is an excerpt from GAIUS, the latter from MARCIAN], and l. 14, § 1, ff., *De acquirendo rerum dominio* [= Dig., 41, 1, 14, § 1, which is an excerpt from NERATIUS].

I know there are people who say that at some time or another all mankind entered into such an agreement; but since that is utterly absurd, I should think that nothing is left for us but to ascribe ownership to the civil law, for it is the agreement of his fellow-citizens which allows each man to have his property secured to him separately, even without a strictly natural possession of it.

Saint Augustine is declared of this opinion in several passages of the Decretum. If my property is found outside of my state, it passes to the man who occupies it.

This is clearly approved by Saint Augustine,⁵ especially in the passage⁶ over which men have toiled so hard in twisting it to other things [than he had in mind]. Goeddaeus⁷ and Lycklama⁸ have taken their share in this toil, but their efforts have been fruitless. 355
Augustine was right in maintaining that ownerships of property rested on human law, and in fact on the civil law, and that if the law were done away with, the ownerships also were done away with; for nothing can be truer than that ownerships acquired by the occupation of nations are recognized only by the laws of each nation, in so far, namely, as things which are not actually held may be retained only by intent. And therefore if my property is found outside of my state, and I am absent and not actually occupying it, it will pass again to the first man who occupies it, as a *res nullius*, or, rather, as a *res communis* and, as Augustine puts it, a *res in medio posita*.

Our authorities in the Digest also use this same jurisprudence. It is for no other reason than that the common agreement of our state shall not be prejudicial to foreign nations. It is different, if friendship has been made a matter of compact between nations, and why.

And this same view was held by the authorities of the Roman law, as is manifest from Pomponius⁹ and Proculus¹⁰ when they clearly lay it down that no one has an ownership of his property outside of his own state; this for no other reason than that the common agreement of a state is not prejudicial to foreign nations, but binds only the members of that state as long as they have renounced

⁵ Cap. 1, causa 23, qu. 7 [= *Decr.*, 2, 23, 7, 1].

⁶ Cap. 1, dist. 8 [= *Decr.*, 1, 8, 1].

⁷ In his commentary on l. 42, ff., *De verborum significatione* [= *Dig.*, 50, 16, 42, which is an excerpt from ULPIAN. On p. 530 of the edition consulted, Goeddaeus discusses the mooted passage of St. Augustine].

⁸ *Opiniones*, bk. II, eclog. 13.

⁹ L. 5, § 2, ff., *De captivis et de postliminio et redemptis ab hostibus* [= *Dig.*, 49, 15, 5, § 2].

¹⁰ L. 7, ff., *De captivis et de postliminio et redemptis ab hostibus* [= *Dig.*, 49, 15, 7].

their rights. And so when our property has come into the hands of foreigners, with whom the ordinances of our state have no force, it ceases to belong to its owners,¹¹ unless under the exception which is rightly made,¹² there is a contract of friendship between the two peoples. For it is by virtue of such a compact that the convention of one state is ratified by another, since, otherwise, friendship could not possibly exist between men who cared for their possessions.

The Turks also rely on this as a law. The Privilegium which Achmet granted to the Netherlands in 1612.

This same jurisprudence is employed by the Turks, as is shown by the second and fifth sections of the Privilegium which Achmet granted to the Netherlands in the year 1612. For there he says that if any man lands in the regions under his sway, whose people have neither a treaty nor a friendly agreement with him, that man's goods are confiscated and the man himself reduced to slavery. Now the Netherlands are exempt from this, even if they land in a foreign bottom, by virtue of the fifth section of that Privilegium. This rests upon the law which we have mentioned.

In dealing with free men, however, Achmet seems to be in the wrong, notwithstanding the defense of Pomponius upon this point, and even of the Emperor of the Turks according to the principles of his own religion.

356 And yet this jurisprudence of the Turks is at fault in one point, namely, that by that system, it sentences free men to their ownership; for as for Pomponius, who appears to allow this same procedure,¹³ we understand him to refer only to the free man who has been taken prisoner for some just cause. Nay, one might perhaps understand that it is in this way too that the Emperor of the Turks, in accordance with the principles of the Turkish religion, interprets also the fifth section of his Privilegium with reference to Christians, that is, to people who by the law itself are his enemies. Otherwise, I for my part can not see that either his reasoning or that of Pomponius can stand; for by the law of nature or the law of nations there has been no common ownership of men, as there was of things, and yet the law which we mentioned must be attributed solely to a community of ownership from which men did not withdraw after striking treaties of friendship.

¹¹ According to the above-mentioned l. 5, § 2 [see note 9, above] and the above-mentioned cap. 1, dist. 8 [see note 6, above].

¹² In the above-mentioned § 2.

¹³ In the above-mentioned l. 5, § 2, at end [see note 11, above].

How by treaty there seems to be a withdrawal from a community of things not held in possession, illustrated by the opinion of Gallus in the work of Festus.

Now by treaties we mean, as Pomponius did, agreements by which men make contracts either of friendship or of hospitality. It is a different matter if they have only decided to refrain from war, for then there is no compact about other things; and in that case there will still be room for the opinion of Gallus¹⁴ when he says that "there is still *postliminium* with free and allied peoples."

Such treaties exist among almost all nations. Hence the distinction of ownerships is attributed by the Digest to the law of nations. A passage from Cicero's De officiis bearing on the matter at hand is adduced and variously emended and explained.

Since in fact such treaties apart from war are wont to exist between nations, it is now manifest, as I should not suppose it has been hitherto, in what sense there is said to be a distinction of ownerships according to the law of nations.¹⁵ For under that law the right which occupation had given in ancient times was recognized and approved by compacts and treaties, or, rather, the right which used to be lost when possession was lost was extended according to the rules which govern ownerships within a state.

It is in accordance with this that I interpret a passage of Marcus Tullius Cicero's,¹⁶ a passage which, if I mistake not, has been badly treated by the grammarians. Here is the usual reading:

Sunt autem privata nulla natura; sed aut veteri occupatione, ut qui quondam in vacua venerunt; aut victoria, ut qui bello potiti sunt; aut lege, pactione, conditione, sorte. ex quo fit, ut ager Arpinas Arpinatum dicatur: Tusculanus Tusculanorum. 357

(There is, however, no such thing as private ownership established by nature, but property becomes private either through long occupancy (as is the case of those who long ago settled in unoccupied territory) or through conquest (as in the case of those who took it in war) or by due process of law, bargain, or purchase, or by allotment. On this principle the lands of Arpinum are said to belong to the Arpinates, the Tusculan lands to the Tusculans.)

¹⁴ [C. AELIUS GALLUS, *De significatione verborum quae ad ius civile pertinent*,] in the work of FESTUS, s. v. *postliminium* [LINDSAY's edition, p. 244].

¹⁵ In l. 5, ff., *De iustitia et iure* [= *Dig.*, 1, 1, 5, which is an excerpt from HERMOGENIANUS].

¹⁶ *De officiis*, bk. I, § 21. [The author's reference is to cap. 21; the passage is in section 21, which forms a part of chapter 7. The text as given is substantially correct, though it differs in some minor points from the usually accepted text. Bynkershoek's emendation does not seem to be justifiable. See MILLER's translation (Loeb Classical Library), p. 23.]

I think there is an error in the closing words, which may be corrected by reading and punctuating as follows:

aut lege, pactione conditione. ex quo fit, ut ager forte Arpinas Arpinatum dicatur, etc.

Cicero means that ownerships are acquired either by occupation or by agreement. By occupation, in two ways: either of *res nullius*, by seizure of an unoccupied possession, or of *res alicuius*, that is, by right of war. By agreement, again, in two ways: either public, when ownership is transferred according to law, or private, when the transfer is according to contract, that is to say, *pactione conditione*, if we take the two words together, as we ought to do. It might have seemed that we should read *condictione*, since *conductum* stands for *conventum* and *conventio*, even to the jurist Caecilius.¹⁷ But *conditione* also may very well be used instead. Very often, too, in ancient books these words are found interchanged, whether through an error in the writing or because both of them have the same meaning—the same meaning at any rate when the word *pacti* is added—, as also Cujas observes.¹⁸ And thus in Cicero *pactio* and *conditio* are two words to denote the same thing, just as with us in this very matter *pactum conventum* or *pactum conventio*. The interpreters who separate these words in Cicero fail to interpret; nor are they any better who keep the word *sorte*, and that where it stands. For this method of acquiring ownership [i. e., *sorte*], however you explain it, can not be distinguished either from acquiring it *a lege*, if people get it by lot from the state, or *a pactione conditione*, if they get it from an individual; for in any case, if ownerships are divided *sorte*, there must always precede a contract, whether with an individual or with the state. But now I have restored the word which seemed to be a faulty reading, and in a different place. *Ager forte Arpinas* is a quite proper expression; in this sense *forte* notes an instance, as in the Digest.¹⁹ Utterly worthless is all that Lambinus and Turnebus bring to bear on this passage; worthless, too, all the prolix effusion of Lycklama.²⁰

There was a common ownership of things in ancient times. This is wrongly denied.

In explaining the origin of ownership some have begun it in one way, others in another; but I should not care to digress on that

¹⁷ In GELLIUS, bk. xx, ch. 1, [§ 54: "Pactum atque conductum"].

¹⁸ On PAULUS, *Sententiae*, bk. i, tit. 8, § 1. [Bynkershoek cites tit. 1, but it is in tit. 8 that Cujas says the words in question are used interchangeably (vol. i, col. 360, of the edition of Naples, 1758).]

¹⁹ L. 9, § 7, ff., *De usu fructu* [= Dig., 7, 1, 9, § 7, which is an excerpt from ULPIAN], and passim elsewhere.

²⁰ *Opiniones ad ius civile*, bk. ii, eclog. 13.

question here. There are even people who deny that there was a community in ancient times, not knowing forsooth that by community is understood a condition in which things had not yet passed into the ownership of individuals, but everybody had an equal right in respect to everything. And they are right, if they deny, as they apparently do, such a community as Plato introduced into his *Republic*; but no one could think of that. This is quite clear from the line of argument which Hugo Grotius pursued.²¹

Concerning the withdrawal from that original community, Grotius does not seem to have brought forward sufficiently correct arguments. The origin of ownership must be sought as much in utility as in necessity.

This I can not at all approve, namely, Grotius' argument in both passages about the withdrawal from that original community and about the ways of acquiring ownership. It was the utility of things with which a man might maintain himself and his family that furnished the reason for seizing them; utility, I say, not, however, necessity. Now, that utility was measured by primitive man according to the use and consumption of things, and in proportion as each thing offered a more or less complete use of itself, the more or less eagerly was it desired. And indeed if those things which might have done service to everybody would have been still more useful if they were held separately, it can not fail to be clear as to the will of each man to attach them to himself. This is taught by our "earliest instinctive actions," it is taught by the greed of mortal men, which the Greeks call by a name of their own, *πλεονεξία* (greediness), a passion which has always been very powerful, and always will be, as long as men shall last. These things, however, whether necessary or useful, they would attach to themselves not otherwise than by natural occupation, that is, by corporal seizure of the things they desired; for by mere intent a single man could easily gobble up even the whole world.

Out of ancient seizure there arises no legal right either in the acquisition or the retention of ownership of things, unless we keep continuous occupation of them, both corporally and with intent. Judgment against Grotius.

That will be readily granted by everyone, but no one will grant that a right acquired corporally and by intent in a thing occupied is not maintained except in the same way, that is, corporally and by intent; and yet that is true of primitive occupation by which men

²¹ *Mare liberum*, ch. 5, and *De jure belli ac pacis*, bk. II, ch. 2.

entered on an unoccupied tract. I think I have already proved this clearly enough from the natural right of every man with reference to everything, not to add [as I might] that after the dropping of possession nothing could then be presumed except an intention of having the thing *pro derelicta* according to the natural jurisprudence of those times; it is the civil law that takes care of possession by intent, and at that time civil law did not exist at all. And in fact Grotius²² may be thought wrong in referring the necessity of what he calls "perpetual occupation" only to those things which by their nature resist possession, such as wild beasts, wrong, that is to say, if we suppose that these pertain to ancient occupation, and not to civil law alone.

If what I have maintained in this chapter as to the origin of ownership from the law of nature and the law of nations will not hold, neither can it hold from all I have collected and accomplished in this whole treatise. That ownership in things occupied does not last beyond possession is a law, I take it, of nature, confirmed by the law of nations, and taken from both of these laws by the Roman jurists. But after I had published these views of mine in the year 1703, Christian Thomasius, a great name among the Germans and among all learned men, took exception to them in very temperate language.²³ The prestige of such a man would not allow me to pass over his objections in silence in this second edition, had I not been anticipated by the zeal of the learned jurist Theodore Graver; for he²⁴ has taken up my case and replied to each of Thomasius' objections with such vigor and success that, if I were to add anything, I might seem to be threshing over old straw, and only wasting good time. And yet, that he may not seem to have made entirely his own
 360 a quarrel which is mine, I can not let the occasion pass without observing in a single word that Thomasius, almost in spite of himself, slips into the natural jurisprudence which I myself set forth, namely, that when possession is lost, ownership is lost, if we think of the mere law of nations. At any rate he recognizes that jurisprudence in the case of movable things, he recognizes it also in the case of things which are immovable, for example, in the occupation of an uncultivated island, if it is afterwards abandoned corporally, even though not in intent. Presently he says plainly:

Immovable things, which are *res nullius*, are deemed to have been occupied, if they begin to be guarded, or if I begin to use a piece of land for the purpose for which it was destined by nature, and the use continues. For instance, if I have built on that land, or have surrounded it with a wall and trench, or with

²² *Mare liberum*, ch. 5, cited above.

²³ *Notae ad Ulricum Huberum "De jure civitatis,"* bk. II, sect. 4, ch. 2, no. 43.

²⁴ In his dissertation *De mari natura libero, pactis clauso*, sect. 1, ch. 3, no. 5, et seqq.

a hedge. Possession is maintained, (he says,) as long as the guarding is continued, even if I am not actually in residence on my possession, but go away. For instance, if a field has been planted and is bearing fruits that I planted, if a field has been hedged in, if a house has been built and is still standing, if I have a key to a house, if I keep others from using a thing, etc.

This he says, and he is right, for in all these ways which he reviews, possession which began with seizure is continued further; and by the continuance of possession ownership is continued. Cultivation certainly and care of a field indicate possession as clearly as anything can. For I do not require, and never did require, that then only a man should seem to have possession, if he carries his movable things on his back, like a tortoise-shell, or broods over his immovable things bodily, as hens are wont to brood over their eggs. I require a possession which is something more than mere intent, but at all events of a kind which proves that I have not ceased to exercise corporal possession.

The objections of Thomasius and Titius against the arguments which the author has brought forward concerning the origin of ownership are weighed.

The rest has already been said by my friend Theodore.²⁵ And I approve his not dwelling at greater length on that natural jurisprudence, which, as Pomponius²⁶ and Proculus²⁷ taught, holds between different nations that are not bound by any treaty; for Thomasius 361 himself has nothing to say with reference to those laws. But Titius has something to say, Titius not so long ago Antecesor at Leipzig, who also has thrust himself into this dispute; for he²⁸ understands the laws to refer to men who with manifestly no right go robbing and plundering, whom we therefore call robbers and plunderers. This is utterly wrong, for, behold, Pomponius²⁹ explains what the law is between nations that are united by no treaty. "These," he says, "are not enemies to be sure, and yet anything of ours that comes into their hands becomes theirs, and a free man of ours if taken prisoner by them becomes also their slave." And that you may not suppose, as Titius did, that there is injustice in this, he presently adds that the Romans also followed this law of nations. "And the same thing,"

²⁵ [That is, Theodore Graver, mentioned above.]

²⁶ In the above-mentioned l. 5, § 2, ff., *De captivis et de postliminio et redemptis ab hostibus* [= *Dig.*, 49, 15, 5, § 2].

²⁷ In the above-mentioned l. 7, ff., *De captivis et de postliminio et redemptis ab hostibus* [= *Dig.*, 49, 15, 7].

²⁸ In his dissertation *De dominio in rebus occupatis ultra possessionem durante*, §§ 31 and 32.

²⁹ In the above-mentioned l. 5, § 2.

he says, "is true, if anything comes from them to us." Therefore whatever Titius may say, whatever Mevius, by the law of nature and the law of nations ownership depends on possession, unless there are compacts to defend ownership without possession, as the special law of each state defends it. The rest of Titius' criticism, from what I have said and from what the learned Graver has said, will "fall of its own weight."³⁰

³⁰ [Cf. HORACE, *Odes*, bk. III, l. 65: "Vis consili expers mole ruit sua."]

CHAPTER II

WHETHER A MARITIME BELT CAN BE OCCUPIED AND HELD UNDER SOVEREIGNTY, AND IF SO, IN WHAT WAY IT MAY BE DONE

When, as the poet puts it, "a road was a thoroughfare for everybody, and there was a common use of all things,"¹ we need not suppose that access to the seas was closed any more than to the land. Access to the land was open to everybody, in order that it might fall, as a reward of industry, to the possession of him who occupied it; as for access to the sea, we shall say that also has lain open for the same end, whether it is occupied by a private person or by a people. 362

Nothing was left "in medio" which could be held separately. Whether as a result of the occupation of the coast lands, the sea could be occupied, and if so, what part of it? The ancients said only the coast waters could be occupied; therefore no other part of the sea was held than the maritime belt adjacent to the land.

Nothing was left *in medio* which could be held separately; indeed, so great was the greed of primitive man and such his passion for possession that, to express it, we have the ancient fable that he aimed at heaven itself.² We may not say, therefore, that the sea was spared. Moreover, he must be regarded as having occupied the sea, who came with that intent, with a single ship or more, into an unoccupied possession of it. But, as the beginnings of all things are very simple, when lands were occupied, only that sea can seem to have been occupied which washed upon those lands; for the ancients used to skirt only the shores, and did not venture further out "to intrust their frail bark to the boisterous sea."³ Accordingly, when they entered into a maritime belt with the intention of having it as their own, for the sake of fishing, or transportation, or any other reason, they acquired control of it by possession; at least in our opinion they should be regarded as having acquired it.

¹ [PSEUDO-SENECA, *Octavia*, ll. 402-403: "pervium cunctis iter, | communis usus omnium rerum fuit."]

² [Cf. OVID, *Amores*, bk. III, 8, ll. 49-51: "quid tibi cum pelago? terra contenta fuisses! | . . . | qua licet, adfectas caelum quoque."]

³ [HORACE, *Odes*, bk. I, 3, ll. 10-11.]

Real ownership has been acquired if such shall have been the intention of those occupying and possessing the "res" in question.

But indeed since by the law of nations we do not recognize ownership without possession, we must examine how far the ownership of a maritime belt seems to have extended. I for my part say, in accordance with a passage of the Digest,⁴ that when part of an estate is possessed, the whole of it is possessed all the way to its boundary, provided that is the intent of the possessor; but if there is no definite boundary, and the part held is thus indefinite, there is no acquisition of possession.⁵ Here, however, if you look at the "boundless" sea, there was either no definite boundary at all, or at any rate it was unknown. Nay, if you cared to set down some such boundary, and were able to do so, we should have to consider that it was not a matter of the mere law of nations, as the Digest says.⁶

Sovereignty over a maritime belt is not to be adduced from the Digest, and why. A "res" is held as a particular possession, only so far as it is truly possessed.

For according to that law, possession is not acquired, unless the entire 'res' in question is brought under the control of the man who wishes to possess it, as we said in the preceding chapter. And in fact by the mere law of nations that matter can not be explained in any other way; for otherwise each single individual would have occupied the universe.

363 , Since, therefore, by the law of nations the lords of the lands can not rule the sea, except where they are in possession of it, and since when possession is lost, ownership also is lost, the situation requires us to go on and examine how far a people, or the ruler of a state into which individuals have united themselves, may seem to hold a maritime belt by perpetual possession; as for the outer seas, we shall treat of them later on. Of course, the literal consequence of what I have just maintained is that the sea should be understood as possessed only so far as it is navigated, and navigated perpetually. But who could navigate perpetually, and be always skirting the shores? Who could navigate with intent of ownership always, and always at the same interval from the land? That is hardly to be admitted, except in a very broad sense.

⁴ L. 3, § 1, ff., *De acquirenda vel amittenda possessione* [=Dig., 41, 2, 3, § 1, which is an excerpt from PAULUS].

⁵ The above-mentioned l. 3, § 2.

⁶ The above-mentioned § 1.

In what way may possession of the sea be kept by continuous navigation? How far may its possession be recognized by reason of the control from the mainland? Possession seems to extend out so far in the sea as the sea can be held in subjection from the land.

I should think, therefore, that the possession of a maritime belt ought to be regarded as extending just as far as it can be held in subjection to the mainland; for in that way, although it is not navigated perpetually, still the possession acquired by law is properly defended and maintained; for there can be no question that he possesses a thing continuously who so holds it that another can not hold it against his will. Hence we do not concede ownership of a maritime belt any farther out than it can be ruled from the land, and yet we do concede it that far; for there can be no reason for saying that the sea which is under some one man's command and control is any less his than a ditch in his territory.

What sort of power, however, is to be understood in order to have the sea subject to the mainland, is a matter hard to define, because of the danger of the logical sophism which the Greeks call *Σωπίτης*; the smallest is not enough, and of course we do not require the greatest, but a power which can be perceived by the intellect rather than unfolded in words, as Julian⁷ once said of such things as have no definite limit. Hence you may see that the early jurists who ventured to recognize dominion over a maritime belt wander about in great uncertainty in regulating its limits.

The precise distance from land that dominion over a maritime belt may seem to extend is a hard question to answer.

Some authorities extend it to a hundred miles, some to sixty; for both classes see Bodin,⁸ Selden,⁹ and, to add him also, Pacius.¹⁰ Some extend it to a two days' voyage, as you may learn, if it is worth while, from Hieronymus of Brescia.¹¹ Others again set various other limits; for these see Gryphiander.¹² But no one could easily approve the reasoning on which all these rules are based, or that reasoning either by which it is accepted that dominion over the sea extends as far as the eye can reach.

⁷ L. 13, ff., *De solutionibus* [= *Dig.*, 46, 3, 13].

⁸ *De republica*, bk. 1, ch. 10 [p. 267 in the 1609 edition].

⁹ *Mare clausum*, bk. 1, ch. 22.

¹⁰ In his disquisition *De dominio maris Hadriatici*, p. 22 in my copy [1663 edition?].

¹¹ *De finibus regundis*, ch. 7, no. 12 and 13.

¹² *De insulis*, ch. 14, no. 20 et seqq. [In no. 22 mention is made of HIERONYMUS DE MONTE, ch. 7, no. 13.]

The early legal authorities differed very widely in this matter. Philip II, King of the Spains, in the Nautical Laws given to the Netherlands in 1563 had no more fixed rule. The opinion that a maritime belt extends as far as one can see from the land is neither a fixed nor a just one.

And yet this seems to be also the way it is defined by Philip II, King of the Spains, in the Nautical Laws, which he gave to the Netherlands on the last day of October, 1563; for there¹³ foreigners are forbidden to attack their enemies within sight of the land. It is settled, therefore, that the subject sea extends that far. But this also is too loose and variable a rule, or at any rate it is not very definite. For does he mean the longest possible distance a man can see from the land, and that from any land whatever, from a shore, from a citadel, from a city? As far as a man can see with the naked eye? or with the recently invented telescope? As far as the ordinary man can see, or he that has sharp eye-sight? Surely not as far as the keenest of sight can see, for in the ancient writers we are told of people who could see all the way from Sicily to Carthage.¹⁴ And so this rule also is wavering and indefinite.

The power of the land properly ends where the force of arms ends. Therefore the sea can be considered subject as far as the range of cannon extends. This interpretation seems to have been used by the Estates of the Belgic Confederation in their decree of January 3, 1671, which is considered and praised.

Wherefore on the whole it seems a better rule that the control of the land [over the sea] extends as far as cannon will carry; for that is as far as we seem to have both command and possession. I am speaking, however, of our own times, in which we use those engines of war; otherwise I should have to say in general terms that the control from the land ends where the power of men's weapons ends; for it is this, as we have said, that guarantees possession. This seems to have been the opinion followed by the Estates of the Belgic Confederation who decreed on the third of January, 1671, that the
 365 commanders of vessels off the coast of foreign princes should salute at sea as far out as cannon will carry from their cities and forts, according as the prince of the shore in question might prescribe; as for his caring to return the salute, that must be left to him to decide.

¹³ Tit. 1, § 27.

¹⁴ [Cf. PLINY, *Natural History*, bk. vii, ch. 21, § 85: "solitum autem Punico bello a Lilybaeo Siciliae promontorio, exeunte classe e Carthaginis portu, etiam numerum navium dicere."]

And they said further that every man is an absolute lord in his own domain, and every foreigner subject unto him. And they were right, in my judgment, though other princes have been wrong in this particular matter. But of these we shall have something to say, after we have discussed the occupation of the outer sea.¹⁵

¹⁵ [See end of Chapter IV, below, pp. 58-59.]

CHAPTER III

WHETHER THE HIGH SEA CAN BE OCCUPIED AND HELD IN OWNERSHIP, AND IF SO, IN WHAT WAY

What the author calls the high sea.

By outer sea [or high sea] I mean the sea which a state can not dominate from the land. That this also can be occupied, and has been occupied at times, can not, I think, be denied. This has happened from the time that "vessels bounded over the unknown billows"¹; at any rate it might have happened if such were the intent of the navigator. The whole expanse of the sea would fall by natural law to the man who occupied it, no less than any land whatsoever, or any maritime belt. But the occupation of it was more difficult, the possession most difficult of all; and yet both were necessary for claiming ownership, I mean, under the law of nations, the only standard by which this discussion should be tried.

The ownership of the high sea can be sought by occupation, and can be maintained by continuous possession.

For from what we have set forth in the first chapter it surely follows that from the earliest beginning ownership of the sea was not acquired except by occupation, that is, by navigation instituted with the intent that he who "first plants free footsteps on unoccupied ground"² desires to be owner of the sea which he navigates.

How each is accomplished. If we give over occupation, we forfeit ownership, and the sea reverts to its primitive condition.

366 It surely follows, further, that that ownership is not retained in any other way than by perpetual possession, that is, by navigation which is perpetually exercised for keeping guard of the sea, if it is the outer sea; for if that guard is dropped, the ownership is dropped, and the sea goes back to its original status, and thus falls to the possession of the man who first occupies it again. And as this has been

¹ [OVID, *Metamorphoses*, bk. I, l. 134.]

² [HORACE, *Epistles*, bk. I, 19, l. 21.]

true from the earliest beginning, so it is still, since it is only the law of a state, as I have declared and proved, that defends ownerships of property even without possession; but since the law of a state has no force outside of that state, it is quite clear that the inquiry into the ownership of the sea, if, as often happens, different princes enter into an action for the right to it, is a matter of the mere law of nations, and must be decided in accordance with the rules concerning possession recognized and approved by that law.

That what is true as between different rulers, is not true as between subjects of the same state, is demonstrated by various arguments. It is another matter, if rulers shall have come to an agreement that the ownership of the sea shall be established without possession.

Accordingly, if a state frequent a particular sea with the intention of having it separately for itself, and yet afterwards cease to frequent it, that state's subjects could not rightly occupy that sea, but it could rightly be occupied by foreigners, who are not ruled by that state's laws; for to all these alike, by the law of nature and the law of nations, the empire of the sea lies open as soon as the possession acquired by occupation has been lost, unless, however, the man who had occupied it had obtained from foreigners by compacts and treaties that they should keep away from it; for then that right which used to be lost when possession was abandoned will be regarded as having been brought under the law of the state, and it will actually be unimpaired even though possession is given up—unimpaired under agreement, as regards foreigners, under the law, as regards subjects.

Nothing of this sort has happened nor can be conceived of as having happened among nations whether federated, friendly, or allied. The reasons for this are considered.

Since, however, such compacts and treaties for maintaining ownerships of property are wont to exist between nations, as we set forth in Chapter I, it seemed necessary to say that, once the sea had been occupied, the control of it belonged to him who occupied it only so long as he had not withdrawn from his right. But so far are we from believing that the agreement concerning other matters between federated, friendly, and allied peoples applies also to the occupation of the sea, that, when the situation required, we argued against this, and made provision for it by compacts.

How a sea abandoned in reality, but not in intent, again becomes "commune." Even Grotius grants this, but has not proved it quite correctly.

367 But that such treaties did not come in, and can not be understood to have come in, each state proves by its own practice, in that it navigates every sea, even though it may have been occupied in former times, not in accordance with another state's permission, but by its own right—even that sea which it is understood has not been regarded as abandoned. This we justify for no other reason than that according to the rules of natural law the sea, ceasing to be possessed, goes back to its primitive community of ownership; for there is no place here for the opinion of Proculus, who holds that a thing does not cease to belong to its owner unless it has been taken possession of by someone else, but rather for that of Julian, that it ceases indeed to belong to the man who lets it go, but does not become the property of another unless it has been possessed by him. And Julian is right, as Paulus ³ rightly says. Even Grotius ⁴ rightly observes that the sea, as far as he grants that it can be occupied, does not belong to him who occupies it any longer than the occupation continues, though he is wrong, apparently, in deriving the reason for this fact from the nature of the sea, which resists possession, "if we may trust the tale." ⁵ But this in its proper place.

The high sea is occupied, if, while it is unoccupied, it is entered with such intent. What an open sea is.

If, therefore, possession is a matter of such consequence, it is of the highest importance to know how the outer sea may be occupied and possessed. Now we understand that occupation is effected by individuals or groups of men who, to seek gain for themselves, plow an unoccupied sea with their ship or ships. By unoccupied sea we mean one into which no one has entered with the intention of occupying it, or, if he has entered it, has ceased again to possess it; now he ceases to possess it who no longer frequents that sea with the intention of ownership.

What is understood by intent to occupy; and how many intents there are which do not have occupation as their goal.

And hence it follows that Hanno, for example, in his voyage did not occupy any sea, for, as we learn from his account, this was

³ In l. 1, § 1, ff., *Pro derelicto* [= *Dig.*, 41, 7, 2, § 1].

⁴ *De jure belli ac pacis*, bk. II, ch. 3, no. II, and *Mare liberum*, ch. 5.

⁵ [The expression "si credere dignum est" is Vergilian. Cf. *Aeneid*, bk. VI, l. 173. *Georgics* bk. III, l. 391.]

not his intention, but only "to found cities of the Libyphoenicians." ⁶ Nay, if Hanno had occupied any sea, he would have had no right left in it when he had returned to Carthage, inasmuch as his possession of it would have been dropped. The intention of occupying and possessing can not be immediately inferred from navigation alone; for suppose that a man navigates not only to found cities, as Hanno did, but for the sake of trading or because of his delight in foreign travel, and has in mind nothing beyond this, he will not become the owner and possessor of the sea which he navigates, for certainly he has no manifest intent of ownership, and without intent there is no title. Nay, further, if a man has entered a sea even for the sake of fishing, he will not be thought to have occupied it, unless his intent is established from some other quarter, just as a man will not be thought to be in possession, if he goes on entering the same sea to fish every year, every month, or even every day; for how many fishermen are there who have their minds on the command of the sea, and would not wish to get fish rather than that? It is manifest from this that men rarely frequent the sea in order to occupy and possess it, and that, if they do so, intent is hard to prove. 368

Intent means this: if anyone as a master occupies the sea, and as a master guards it after its occupation.

Nothing, however, shows that intent more clearly than if a man after occupying the sea proceeds to assert his possession by spreading out his forces to protect the ownership he has acquired. There is a famous example of this in the case of the Mediterranean Sea, which is dealt with in the law ⁷ which we have interpreted.

The Romans once had just such ownership over the Mediterranean Sea. They had completely surrounded that sea with their dominion, and possessed it with four fleets and with their control of the strait of Gibraltar and the Dardanelles. Such control is generally required for the right of ownership.

That this sea once belonged to the Romans, can not, I suppose, be doubted, for they embraced in their own empire all the regions where it washes upon Europe, Africa, and Asia; so that there was thus no one who shared the possession with them, and could therefore claim any right in it because he controlled the land. And not only so, but after they had occupied it, whether by the law of nature or the law of war, they must be regarded as having kept a sort of perpetual hold on it by means of the four fleets which they kept in

⁶ [The words quoted above are in his *Periplus*, § 1.]

⁷ L. 9 [= *Dig.*, 14, 2, 9, which is an excerpt from VOLUSIUS MAECIAN].

perpetual service; for in this way, if any, the command of the sea is held *iure optimo*. The first fleet was stationed at Misenum, the second at Ravenna, the third at Frejus, the fourth at Byzantium. But enough, and more than enough, has already been said of this by others. Now with those fleets the Romans could not only sweep from the sea all the foreign ships there were, but also close in and crush them like so many hunted beasts; and this was done so thoroughly 369 that at length the Mediterranean Sea was not navigated except by subjects of Rome and by her State fleets, and in fact there was no one to disturb their possession either lawfully or unlawfully. Besides, the situation of that sea seems to show that the Romans possessed it for still another reason, for, behold, it could not be approached by others except through the narrow straits of Hercules [Gibraltar] and Thrace [the Dardanelles], and these same straits were possessed by the Romans on both sides, for it is in this way as a rule that straits are brought under control, as we shall go on to say in the next chapter. The man who has complete command over a strait commands also, we say, the sea which is approached by that entrance, if such is his intention, and no others share in possession with him. When this is the case, and the sea is found to be of such a size as readily to admit others to occupy it, although its straits are commanded, there will none the less still be necessary a guard of fleets to maintain possession. Beside the Mediterranean Sea, however, the circle of lands was everywhere Roman, and even if they had not commanded the straits, this was made up by the guard of their fleets which, as we have said, they employed perpetually. This shows how properly Mela and other Romans call the Mediterranean *our sea*.

The Romans were also sovereigns of the English Channel.

The Romans also held by right of empire that part of the ocean which lies between Britain and the Continent, both because they had possession on both sides of it, and because they also guarded that strait itself with their British fleet. This is mentioned in the Digest,⁸ and hence conquered Britain is said to be washed by the Roman wave in the lines of Scaliger :

Illa procul nostro semota excusaque caelo,
 Alluitur *nostra* victa Britannis *aqua*.
 (Distant that land remote and smiled not on by our heaven,
 Britain, the conquered land, washed none the less by *our sea*.)⁹

The verse would stand also if you read *Britannia*, but I am inclined

⁸ L. 46, ff., *Ad Senatus Consultum Trebellianum* [= *Dig.*, 36, 1, 48 (46), which is an excerpt from JAVOLENUS].

⁹ *Catalecta*, bk. I, tit. 7, p. 210.

to think that just as we say *Illyris* and *Persis* there is another also who has said *Britannis*.

In other places in the ocean the Romans had no legal rights.

That the Romans had a perpetual fleet elsewhere in the ocean, nay, even the guard of a single vessel, I do not know that tradition tells us; and even if you were to see the remainder of the ocean also 370 assigned to them, even the entire ocean where men sail, still they did not hold it under their sway any farther out than it was subject to the mainland which they possessed; for the control of the mainland does not extend any farther than this [i. e., than it can hold the sea in subjection to it], as we argued at length in our Chapter II.

On the sea a special right can not be sought by a special force of arms and fleets.

And yet no one need believe that we grant a special right in the sea to a special force of weapons and fleets; that is not the jurisprudence we follow, but that natural jurisprudence which renders an equal right to all, to armed alike and unarmed. The title to ownership of the sea, we have stated, is occupation. This occupation, however, is not just, unless it is acquired either by a just war or by the navigation of a sea, the possession of which has not been occupied or has been abandoned.

Unarmed possession maintained by a single skiff is sufficient to show occupation. Concerning the justice and injustice both of occupation and of possession.

Wherefore, if a man even with a single skiff occupy a sea which has not been occupied and possessed before, and if in the same skiff, with the intention of ownership, he proceed to navigate that same sea, he will not be driven away from it without injustice, not otherwise than if after the primitive community of ownership a man were to occupy a piece of land and then be driven from it against his will. I forbid the use of violence to interfere with any man's possession; if he is driven out, and this amounts to injustice, he will be able to repel force by force, since it has been so ordained by nature, and all the laws and all the statutes permit it.

How what the author has said about armed fleets must be considered.

But the point of what we had said about fleets is this, namely, that we may know that in almost no other way, certainly in no more

manifest way, can the question of keeping possession of the sea be settled. When fleets are built to guard a sea, no one could have any doubt about this matter, for in that way ownership is exercised *ipso facto*; at other times men often navigate with an intent quite different, at any rate foreign to maintaining possession.

SOME FURTHER OBSERVATIONS ON THE OCCUPATION AND POSSESSION
OF THE SEA; WHAT EACH OF THEM GIVES, AND
WHAT FOLLOWS THEREFROM

The rules concerning acquisition and loss of possession are practically the same in natural law and in civil law. Nevertheless civil law defends possession by intent alone, but natural law does not.

What we have set forth thus far concerning the ownership of the sea has nothing to do with authorities and testimony, but is derived solely from the origin of ownership and from the rules for acquiring or losing a possession which are admitted by the law of nations. And these rules, for the most part, we find written in the civil law of the Romans, except that it is by the civil law that we retain possession by intent alone¹; that is approved by the laws of each state, but we can not take account of these laws as between different peoples, at any rate with regard to the sea. In all other respects, what we have adduced with reference to occupation and possession whether by intent or corporally is set forth in so many passages by the Roman jurist that to quote them here would be tiresome to myself and to others.

Possession consists in use, nay, it is use itself; from which it follows that possession is completed by navigation alone, if the high sea is meant.

Since, however, possession consists in use, nay, is use itself, as Cujas has shown,² we understand pretty clearly that use of the sea, if accompanied by a desire of ownership, is to be regarded as equivalent to possession. And inasmuch as that use is completed only by navigation, no matter what results that navigation brings, it is settled that it is only navigation that here plays the part of possession, as Caepolla, Gryphiander, and other jurists have rightly observed.

¹ L. 4, C., *De acquirenda et retinenda possessione* [=Code, 7, 32, 4, which is a rescript of the Emperors DIOCLETIAN and MAXIMIAN to NEPOTIANA].

² In his *Paratitula ad Titulum Codicis "De acquirenda et retinenda possessione"* [that is, his commentary on Code 7, 32 (vol. II, col. 472, of the Naples, 1758, edition)].

Selden and Strauch have decided less correctly that possession of the sea was maintained in other ways besides, which are set forth.

Strauch³ and Selden⁴ are wrong in separating themselves from this company. They persuade themselves that possession of the sea is maintained by the appointing of chief pilots at home, by the setting forth of proclamations, and by other vain and common ways of issuing orders and commands.

The author's interpretation of this matter.

372 Above and beyond intent we require actual occupation, and what the Greeks call *κατοχή*, as much in acquiring possession as in retaining it; for, to put it briefly, our whole argument amounts to this: the man who has entered a sea does not straightway become the owner of it, even if it was unoccupied, for intent may be lacking and yet ownership of it could not have been acquired without its being entered, for ownership does not fall to any man's lot without actual occupation. Again, if ownership has been acquired corporally and by intent, it is not maintained except in the same way; continuous possession is therefore required, and this is of no effect unless it is also corporal possession; now possession is regarded as corporal because of control from the land, in the case of a maritime belt, because of perpetual navigation or the stationing of a perpetual fleet, in the case of the outer sea. It is in these ways that men must actually occupy the sea; there is no possessing here by intent alone, none, at any rate, that is prejudicial to foreigners if they occupy it again.

At the present time all seas belong to their occupants, as "res nullius," even those seas which today certain rulers claim as their own.

From this I would have it inferred that seas, whether never occupied or occupied formerly and afterwards abandoned whether by intent alone, or corporally alone, or both, now pass again to the possession of the man who occupies them, as things do which are manifestly *res nullius*. As for seas formerly occupied by those whose name and memory hardly survive today, there can be no doubt; touching this matter we shall give examples of nations in the proper place; the case of those, however, who are powerful even today, is harder to examine.

³ In his dissertation *De imperio maris*, ch. 5-7.

⁴ *Passim*.

There is no sea which is guarded by continuous detention. Intent and disposition alone of an owner do not suffice to maintain sovereignty.

But however freely we might grant that there are now instances of nations which had once justly occupied some particular sea, still I think it true that they can not justly proclaim themselves lords of that sea today; for show me now some one sea which is possessed by the mind of its owner, that is, is kept with an unbroken hold. There is none, by Hercules, none. The mere mind and desire of the owner I recognize, but corporal occupation I look for and do not find. Nay, even that absolute possession of the Mediterranean Sea, which once belonged to the Romans, was lost along with the majesty of the Empire.

The case of the English and Venetians.

As for the English and Venetians, what shall we say? Do they possess their sea? But where is their uninterrupted holding of it? 373 where their perpetual fleets? Surely not in the British sea or in the Adriatic. But of these and of others who claim an empire of the sea today I shall have something to say in the chapters which follow. Meanwhile let us hold to this: that every sea, which is not in the neighborhood of the shore, is unoccupied, for it has either never been possessed or it has ceased to be possessed; that I, therefore, as much as anyone else, am its owner, if I occupy it, and remain its owner, if I continue in actual occupation of it.

What do occupation and possession of the sea give? The argument of Grotius that command, but not ownership, in the sea can be acquired is not to be admitted, and why that is so.

Furthermore, it is important to know what occupation and possession of the sea give; this, namely, that the sea when occupied and possessed passes over into the ownership, into the property of him who occupies it and possesses it, and that so completely that he can decide concerning it not otherwise than any prince exempt from law can decide about his domain, or any father of a family about his own estate. For we must not concede to Hugo Grotius⁵ that only command, without any right of property, may be acquired in the occupation of some portion of the sea, and that the testimony of the ancients as to the ownership of the sea should be considered with

⁵ *De jure belli ac pacis*, bk. II, ch. 3, no. 13.

reference to this, for let it be proved, as it will be proved in its turn, that there is no obstacle at all to our holding that the sea is capable of ownership, certainly there is nothing either to forbid our assigning the same right to the occupation of the sea as to the occupation of other things.

How command and ownership differ in a state, and how they may differ on an occupied sea, but never do. The ownership of an occupied sea seems to be what the jurists are accustomed to describe as ownership "optima maxima."

Command and property in a state differ in the way which Seneca⁶ has explained; in the case of the sea there is no difference between them, unless one chose to maintain that those who cross an unoccupied sea are under the command of him who occupies it, although even this does not concern the sea itself. If several persons had occupied it, and these had proceeded to elect a single individual to exercise a preeminent command, I should at once recognize his separate right of property; but as things stand, because there is nothing of this sort, and never has been, I declare one and the same person both ruler of a sea and its real owner; and at the same time I assign to him the fullest and highest control which the jurists regularly ascribe to ownership.

Enumeration of the effects which follow the case of maritime ownership or sovereignty.

- 374 And therefore, as every man is free to control and manage his own property, so the owner of a sea will be able to sell it, to exchange it, to give it away, to offer it in payment, and in other ways to deal with it as he pleases. And yet we accept this as true only with this restriction, that the man who has withdrawn from his right must follow the vulgar rule and not transfer more of a right than he has himself, that is to say, without possession no right at all.

A lord of the sea is competent to interdict its navigation either unconditionally or conditionally. Examples of both.

The status of maritime ownership is followed also by other effects, effects which are not approved, to be sure, by all men alike, but are necessary, none the less, under the definition of property. Notice that even those who have conceded an ownership of the sea are very much troubled in assigning its effects, and admit either

⁶ *De beneficiis*, bk. VII, ch. 4 and 5. [The author refers by mistake to bk. VIII.]

only insignificant effects or none at all; but in this they are quite wrong. There is no reason why ownership should have any less effect here than in the case of the land, or any part of the land; and therefore we say that a man who holds a sea after a lawful occupation of it can also prohibit others from navigating it, whether absolutely or conditionally. Absolutely, if for instance, he were to order them to keep away from it in every possible way, for fishing, or transit, or any other reason.

Transit, or innocent passage, can be prohibited both on sea and land, despite the authority of Grotius. He who controls a strait, has legal right to command those who pass to pay tolls.

For transit, even without weapons and without doing harm, may rightly be forbidden by an owner; this must be stated absolutely, though here again ὁ Μέγας (the mighty one)⁷ is against us. He denied this for both land and sea, but he has no support in law. No one, against my will, has any right to use and enjoy my property; the rule of humanity is one thing, that of the law is another; but it would be tedious to follow out that argument as it deserves. Conditional prohibition of navigation will come when the use of a sea, conceded in all other respects, is refused in this or that special case; for example, if a man wishes to fish in it, to cross it to this point or that, to carry this or that merchandise, if he refuses to salute or not in the manner prescribed, if he refuses to pay toll, and in all the thousand cases of this kind. For in these respects he has the right to command, who commands the sea, whether it be the outer sea or a maritime belt.

The Danish Kings used this right in the strait leading to the Baltic Sea. Why the Swedes had no right in that strait.

It was under this right that, just as the Byzantines once imposed 375 tribute at the Byzantine strait [Bosphorus], so in the barbaric ages, the kings of Denmark imposed tribute at the strait by which men enter the Baltic Sea, for they were in possession of Zeeland and Scania on either side. It looked, however, as if they had lost that right, after the kings of Sweden began to hold Scania, had it not been preserved for them by agreements with Sweden; for as the whole strait once belonged to the Danes, who possessed the land on both sides and had all but absolute command over it, so it looked as if half of it would pass to the possession of the Swedes, after they had occupied the whole of one side by right of victory. For just as when a city is

⁷[That is, GROTIUS,] *De jure belli ac pacis*, bk. II, ch. 3, no. 12

taken, even the territory of that city passes to the victor, so, too, with the sea which the vanquished used to hold by right of the land which bordered on it. But in this matter, as we have said, provision was made by agreement.

How the Spaniards will probably sometime subject the Strait of Gibraltar to their own sovereignty.

Moreover, it would be a surprising thing, should the power of Spain haply be restored, if she did not use the same right and subject the strait of Cadiz [i.e., Gibraltar] to tribute—a tribute slight, to be sure, at first (otherwise the business would be very hard to begin), under the pretext, if not of maintaining lights, at any rate of guarding the Mediterranean Sea from the pirates who dash out from the neighboring coast of Africa; and then heavy and ever heavier. And in fact if they had built some kind of fortification at the extremity of Spain and Africa (for they possess the land on both sides) and had added a guard of a very few ships, that toll would not be too hard to explain, indeed it would be of immense advantage.

The lord of a sea has a legal right to prescribe a salute and the method in which it is to be given. The just decree of the Estates of Holland concerning the salute to the citadel of Kronenburg.

As for saluting, and the proper manner of saluting, we have said that this also is very properly controlled by the man who controls a sea or strait. And hence it is certain that the Estates of Holland were entirely right in decreeing, on May 16, 1670, that the citadel of the King of Denmark (Kronenburg) in the strait of the Baltic Sea should be saluted as the Danish king had ordained, provided that no worse terms were laid upon the Netherlanders than upon other peoples. And this is the point also of the general decree made by the United Provinces in the following year, the decree which we mentioned in the second chapter.

The less just rule of Philip II forbidding the Spanish ships to dip colors first in a salute. The unjust condition imposed on the Duke of Florence by the Admiral of the French fleet in 1668.

376 We can not, therefore, approve of the rule laid down by Philip II, King of the Spains, in the Nautical Laws ⁸ which he gave to the Netherlanders on the last day of October, 1563, when he forbade that the flag on which the insignia of the Spains were displayed should be

⁸ Tit. 1, § 23.

lowered first to salute the fortifications and cities of foreign princes. And in like manner we can not approve of the commanders of the French fleet forcing the Duke of Florence in the year 1668 to have the citadel of Livorno first salute their fleet by the firing of cannon, telling him that the same thing had been done in the other places of Italy. The story is in Aitzema.⁹

Why these claims have no legal standing and whence they arise.

In a sea which is very close to another prince's mainland, it is not fitting that we give laws but receive them, for there we are subject unto him not otherwise than if we were in his territory, as we clearly showed in Chapter II. But such acts proceed from the haughty temper of rulers which is wont to mete out justice by force of arms, and, as the poet says,

Jura negat sibi nata, nihil non arrogat armis.

(Spurns all laws

And by the sword alone asserts its cause).¹⁰

⁹ [HISTORIEN,] bk. XLVIII, p. 754 in my copy.

¹⁰ [HORACE, *Art of Poetry*, l. 122. VOLLMER's edition of HORACE in the Teubner series reads *negat* and *arrogat* instead of *negat* and *arrogat* as given by Bynkershoek. The translation is adapted from that by FRANCIS in *The Works of the English Poets* (London, 1810), vol. XIX, p. 743.]

CHAPTER V

WHETHER THE BRITISH OCEAN BELONGS TO THE ENGLISH, OR EVER DID BELONG TO THEM

No sea is held today under the sway of any ruler. The English deny this, and their foremost champion has been Selden.

We have said above that no sea is held today under the dominion of any prince, and we have proved it according to the rules of ownership. By these same rules it will not be difficult to overwhelm the English, the Venetians, and the Genoese, who are today chief among the peoples who deny their force, and to plead the case for the freedom of the seas, or to be more explicit, for common ownership of all seas at the present time. Many Englishmen have taken part in this controversy, but the chiefest of them all is John Selden.¹

How Selden assumed that it must be proved that those who ruled Britain had occupied the British sea continuously down to his own day, but how he did not prove it. What vain efforts Selden has expended on the early Britons.

377 In the first chapter of his book he takes it upon himself to prove that the ownership of the British sea was obtained by the continuous occupation down to his own day of those who ruled Britain; namely, the ancient Britons, the Romans, the Anglo-Saxons, the Danes, the Normans, and the kings who succeeded him. If this has been proved, we will own ourselves beaten (*herbam dabimus*),² but it has not been proved; I have determined, however, not to refute each single one of his arguments, even when fetched from Arabia, but only to offer such proofs as can manifestly suffice to subvert all his arguments.

He grants, and it is true, that occupation and possession of the sea, and nothing else, give to its occupant or possessor sovereignty (*imperium*) or ownership (*dominium*), for here we use these words interchangeably. But I do not grant that those proofs which he offers of a subject sea are in this case sufficient to make us believe that the Britons, from the earliest times to which memory of man

¹ In his *Mare clausum*, bk. II, entire.

² [See FESTUS; and OTTO, *Sprichwörter*, s. v. *herba*, 2.]

goes down to our own present day, were perpetual lords of the ocean, which we now have under consideration. Not to dispute how far on every side that ocean extends, I am ready to let Selden argue about the size of the British ocean, provided only he does not win in the point at issue. Although he thinks he has accomplished this in the second and third chapters of that book, so far as the early Britons are concerned, what, pray, has he proved there?

Navigation or fishing alone is not sufficient for acquiring sovereignty. Selden seizes a certain passage of Solinus by the throat and drags it into the case. There is not a shred of proof of intent or design of sovereignty in the age he cites. A passage from Caesar's Commentaries is introduced in error. What the real sense of the passage is.

Selden says that the early Britons navigated their own sea, he says that they fished in their own sea, and that thus in every way they had the use of the sea, without which neither occupation nor possession can be imagined. But in truth I remember that I have said often enough in the preceding chapters that neither occupation nor possession is legally acquired by the mere use of the sea; for is there not someone who sails the sea and fishes in it without any intent of acquiring sovereignty over it? or to speak more exactly, how many are there who do sail and fish with such intent? Again, because Solinus somewhere ³ says: "The Britons decorated the hilts of their swords with the teeth of the monsters which swim in the sea," who, unless snatched away by partisan zeal, would claim from that the sovereignty of the sea for the Britons? Selden has made this very deduction by long reasonings, but, we hasten to add, they are satisfactorily light of weight. The Britons did indeed catch those monsters of the deep, they did indeed sail hither and thither across the sea, but I do not find any intent of becoming occupants or possessors 378 of the sea. Selden elicits this intent from the following words of Julius Caesar:

In fact, nobody except traders journey thither without good cause; and even traders know nothing except the sea-coast and the districts opposite Gaul.⁴

Selden's sight is so sharp that he thinks from this fact alone it is established that the Britons drove away or at least interdicted from

³ [*De memorabilibus mundi*, ch. 34 (*De britania & insulis gallici oceani*). The Venice edition of 1493 was used to verify this passage. ARTHUR GOLDING's translation (London, 1590) runs as follows: "They doo trimme the hylts of theyr Swords with the teeth of monsters that swymme in the Sea."]

⁴ *De bello gallico*, bk. iv, ch. 20. [The author's reference is to ch. 5; the passage is in ch. 20.]

their sea all foreigners except traders, and that no one put in to their shores against their will; nay, even more, that those who—according to ancient story—sailed across from Gaul to Britain did not dare do so until permission had been obtained in accordance with maritime regulations of the British isles. All these things, I say, he gets out of the passage from Caesar, although it is quite certain that Caesar is not speaking of any interdiction of the use of the sea, but only of the fact that Britain was not rashly frequented by the Gauls. Likewise we understand that Ultima Thule, though visited by few people, was interdicted to no one.

Selden's arguments are collected without any respect for order, and will be answered in the same way.

It would be a long task, and one which does not devolve upon me, to run through all the epochs of the English people which have been taken up by Selden one by one. Granted that the English have been navigating the British sea right down to the present time, the French, the Netherlands, the Swedes, the Danes, and others have been navigating it also; and are these people for that reason to claim the sovereignty of the British sea? why not, since their occupation is just the same as that of the English, and their possession likewise? But [says Selden] the English appointed maritime magistrates, a Count of the Saxon Shore throughout Britain, then a prefect of the sea or of the fleets; they levied tolls, they permitted or forbade passage on the sea or fishing in it, they set boundaries to the sea. These and all the other arguments that are used of maritime sovereignty [are brought forward by Selden]. Finally [he says] the public acts of the nation, the authority of writers, the testimony of peoples, all recognize that sovereignty of the sea.

Both intended and real possession must absolutely be proved. It is not denied that possession of the British sea was sometimes in the power of those who held Britain.

Nevertheless, these acts, even if they are most evident, have no validity apart from permanent occupation. It is easy, in the form of an ordinance, to appoint at home prefects of the fleet, easy to order tolls to be paid, whether their own people or other peoples were
 379 affected; it is likewise easy, by handing down interdicts, to forbid foreigners to sail on the sea, or to fish therein, and it is easy to rule the expanse of the ocean by writ, but these acts are not done by right, where alone our case rests. And if there is no direct evidence of a subject sea, we deny both intended and real possession; not because I think that the rulers of Britain did not sometimes occupy the British

sea, and have the intention of holding it, but because when possession was lost, sovereignty was also straightway lost.

A precedent from the Romans. Another precedent from King Edgar, and the rejoinder to Selden in respect to it.

I willingly admit that when the Romans held the island they were for the time being masters of the British Channel, because their British fleet lay there, but I submit that at other times the fleets of Saxons, Angles, Normans, and of the later kings of Britain, navigated that channel with the same intent, and guarded the possession of that very same sea. Selden, indeed, with very pretentious erudition, has extolled their maritime sovereignty, but I am persuaded that he has furnished no other precedent for an occupied and possessed British sea than his reference⁵ to King Edgar as follows, taking as his authority statements in the writings of the Monk of Malmesbury and others: "Every summer immediately after the Easter celebration he [King Edgar] commanded his ships along the entire coast to be assembled," and sailing round the island he inspected the sea, "in order that he might prevent the incursions of pirates, being thus vigorous and diligent for the defense of his kingdom against foreigners."

Nothing seems to have been brought forward that shows effective possession.

But this has no bearing on a permanent and effective possession of the sea, however much it resembled it, nor is it any more pertinent if Edgar maintained a patrol on the sea with any number of ships you please for a period of a year, or for that matter, for a period of two years, or of three years. Perpetual possession is the necessary criterion, because if possession is interrupted in any way, ownership is also interrupted.

Whatever may be the case in ancient times, today there is no fleet and no ship that navigates the British sea in the name of the English people.

Nay, more! If the English in ancient times possessed—or not to waste words, let us say even today possess—a fleet or a single ship that sails the British sea in the name of the English people, none the less we submit the fact that today we call the sea *free and common to all*. If you seek and find nothing of this sort, and if here there is 380

⁵ [*Mare clausum*,] bk. II, ch. 10.

no possession of intent alone, then their contention and our opinion coincide.

Not even in the strait between France and England have the English any right beyond the control exercised from the land.

Since this is so, we know that the English do not have any particular right in that sea, except such as flows from the possession of the coast; and they not only have not as extensive a right in the British sea as Selden points out to us at great length, but not even in that strait which separates France from England. They neither possess both shores, nor did they ever possess them, except long ago when they had military possession of a portion of France; on the one side they do have England, but on the other side the French and Netherlanders have had continuous sovereignty, no less than the English in Britain. But even if the English had possessed both shores, they would not have that exclusive right even in the strait, unless they held it, as the Romans formerly did, with a permanent fleet, or with some other guard of ships; for on account of the width of the entrance and exit, it can not be said here that the sea is possessed because of a right of possession in the lands on both sides.

Temple's argument to the contrary is sufficiently refuted.

But nevertheless on this ground, Temple⁶ arrogates to his countrymen, the English, the sovereignty of that very strait, namely from the time of William called the Conqueror, who was the Duke of Normandy. It is a ridiculous claim, because if it were true, the strait would belong as much to Normandy [as to England], and today would therefore belong to the King of France. But authority of the land does not extend beyond the point where the sea can be considered as under control; otherwise it would be as if someone should suddenly say that the Kings of Spain were sovereigns of the ocean between Spain and America, because they possess lands on both sides of it; and indeed there is a widespread report that those kings do claim the sovereignty of the ocean for themselves, but in Chapter VII—where that discussion more properly belongs—we shall deny that claim.

The authorities which Selden uses are of no value. Nevertheless whatever they are, the sovereignty of the sea must not be derived from the testimony of mistaken persons.

Although the facts in this matter are, it seems to me, sufficiently clear, there is no reason why we should begrudge Selden the

⁶ *An Introduction to the History of England*, p. 220 of my copy [p. 585 of 1750 ed.].

fine array of evidence with which he so proudly guards the glory of his nation far and wide. I recognize the vast amount of erudition displayed, but do not recognize equal force of reasoning. I shall not have refuted the attestations drawn either from domestic—numerous as they are—or even foreign sources, but whatever they are, I am unwilling that the sovereignty of the sea be derived from the testimony of mistaken persons. You may see how marvelously blind are the writers, especially those of a barbarous age, whom he cites more than once, in their description of cities, seas, and localities. 381

In cosmographical matters foreign writers have often made mistakes. An Arab geographer is introduced into the argument by Selden. Zosimus also errs in several places.

Some unknown Arabian geographer, cited by Selden,⁷ mentions the "sea of the English." So far so good. But in the same passage he goes on thus: "From Toledo to St. James, which is situated upon the sea of the English, there are nine stages," etc. Then he calls the place where the city of St. James is situated "a promontory of the English sea"; that is to say, he locates a city which is admittedly in Spain upon a sea which he calls the English sea. One may find many passages of this type even in Zosimus. He says⁸ that "Paris is a little town of Germany," and that "Bologna is a city of lower Germany." In the same book he says that "the Rhine empties into the Atlantic Ocean."

I am not willing to raise any question about the name of the Atlantic Ocean, since I know that the old writers have used this name up to the present time; but Zosimus says "Rhine" when he means either the "Scheldt" or the "Meuse." Our countryman Eynde⁹ has made the same observation where he brings together the passages from the authors and proves that they also in a similar way misuse the word "Rhine." These errors and others of the same kind were born of an ignorance of geography and of the fact that there was often a great distance between the places where the writers lived and the places of which they had to treat.

Actual names of seas give no legal right over them.

Next, it is more than clear that the actual names given to seas do not of themselves grant sovereignty, for the names of seas are usually bestowed from no other source than from that of the neighboring

⁷ *Mare clausum*, bk. II, ch. 1.

⁸ [*Historiae novae*,] bk. III, [ch. 9]; bk. VI, [ch. 2]; bk. III, [ch. 5. All of these quotations are substantially correct].

⁹ *Chronicon Zelandiae*, bk. I, ch. 5.

nations whose shores they wash, and for that reason a sea might at any time have two names from the two peoples who lived on either side of it, yet were not sovereigns of it.

An observation concerning the Gallic strait bearing on this matter.

I am aware that others have already observed that the British ocean itself is sometimes called the "Gallic" ocean, and the "Gallic" strait, but the English will not find it hard to show that no legal claim over it attaches, for that reason, to the King of France.

The nations which acknowledge the maritime rule of the English prejudice themselves, not others.

382 Of more consequence seems to be the testimony of the nations which acknowledged that dominion of the English. I speak of acknowledgments, not obtained unjustly, but voluntary and freely made; moreover it will not be denied that there are acknowledgments of this sort from certain peoples. But if dominion was recognized when the English had possession of the sea, it will be seen that there is no such recognition when they are not in possession of it, seeing that everyone is presumed to have considered that which is a matter of right and consequently that which we have just said. It is quite another thing, if that dominion shall have been recognized by peoples who are not in possession of the sea, or if it shall have been openly effected by treaty arrangements, for then, exactly as if they were subjects of England, such peoples are understood to have renounced the right which they had by nature, because the sovereignty inherent in the state has been admitted according to what has been brought forward and proved in Chapter I. But this is prejudicial to those who make this acknowledgment, and especially to those who make the acknowledgment following the rule of law, which has often defined that things done between certain parties ought neither to help nor to injure other parties. It ought further to be recognized that such acknowledgment of maritime sovereignty is to be voluntary, and not obtained by the sort of trivial consequences which Selden more than once brings into obnoxious notice. Nevertheless it seems to be voluntary enough, if anyone should agree that it be unlawful for him, against the other party's knowledge or consent, to build such and such a number of ships, or ships of such and such a size, or that he would not sail beyond this or that boundary line. There are some such treaties, which antiquity has preserved for us, which Grotius mentions,¹⁰ and which are many times praised by the author of the *Mare*

¹⁰ *De jure belli ac pacis*, bk. II, ch. 3, no. 15.

clausum.¹¹ For in such treaties as these we agree, indeed we expressly acknowledge, that we will be subjected specifically to the maritime power of others.

What these testimonies are, and when they apply. Neither the French, nor the Confederated Netherlands have made any such acknowledgments. The treaties of peace between Netherlands and English are brought into discussion. We pay respect to the royal ships of the British, as we do to their ruler, but their maritime dominion seems to be recognized not at all because of that fact. Section 4 of the peace of 1674 is explained.

Accordingly the French, who are on their guard against the Britons, may see this for themselves, if, as they contemplate, they shall have decided to ask the Britons how many ships they may be permitted to construct. Indeed the British attempted to impose a like servitude on the confederated Netherlands when the peace conference of the chief men of the English state and our state was being held at London in 1653, but it was to no purpose. Nevertheless they obtained in the peace agreements, which were drawn between them and us in 1654, 1662, 1667, and 1674, that deference should be paid to the royal ships of the British as if to their ruler. 383

And in Section 4 of the peace agreement made on February 19, in that same year 1674, between Charles II, King of England, and the States-General of the Low Countries,¹² it was expressly stipulated that the States-General acknowledged the right of the royal ships of the English to receive the honors of the flag from all the fleets of the States-General in that entire expanse of sea which lay between the North and the promontory which is called Finisterre.

Why we courteously uphold the majesty of the English King.

But this must be understood in this way, namely, that all agreements which we make in order that war may be avoided, are applicable also to the English, because there is agreement to that effect, for they have *per se* no particular rights in that sea. And besides I wish it to be thus understood in order that we be not led to think that the Netherlands by that act conceded to the English the sovereignty of that sea, for it is one thing to admit oneself a subject, and quite another thing to acknowledge in a courteous way the dignity of a people, as Proculus explains it.¹³ This action simply signi-

¹¹ Bk. I, ch. 11.

¹² [A Collection of All the Treaties of Peace, Alliance, and Commerce between Great Britain and Other Powers, from the Treaty Signed at Munster in 1648, to the Treaties Signed at Paris in 1783 (London, 1785), vol. I (from 1648 to 1713), p. 203.]

¹³ In l. 7, ff., *De captivis et de postliminio et redemptis ab hostibus* [= Dig., 49, 15, 7].

fies that we recognize that one nation has precedence over another, not that we recognize that the other nation is not free. For a long time the Dutch had considerable naval power, and have yet, but nevertheless their fleets are inferior to those of the English. But if they were not inferior, none the less it is recognized by the customs of nations that republics yield precedence to kingdoms, and that the representatives of each use the same right.

Without tarnishing the Netherland name the same courtesy can also be extended to the French.

Wherefore we paid that deference to the English in that sea, because without a stain on the honor of the Netherland name it could also be paid to any others whatsoever, not only to the English, but also to the French, whom we outrank now in naval power, as we outranked them formerly, for they are beginning to have considerable power on the sea, especially under their present king.

The English have no right to flatter themselves because we are courteous to them.

384 And so, to draw the argument to a close, we respect with due courtesy the dignity of the English both on land and sea, but we deny that from what we do on the sea they can flaunt against us any legal dominion over it, or that they can justly flatter themselves that they have even a general sovereignty over the British sea. Especially we further deny what Selden emphasizes,¹⁴ namely, that the dominion of the sea accompanies and has perpetually accompanied the dominion of the Island of Britain. But we have expiated already quite too long on the English alone.

¹⁴ [*Mare clausum*, bk. II, ch. 3.]

CHAPTER VI

WHETHER THE VENETIANS POSSESS OR EVER DID POSSESS THE
ADRIATIC SEA, OR THE GENOESE THE LIGURIAN SEA, OR
FRANCE ANY RIGHT TO THE MEDITERRANEAN SEA

*The Venetians claim sovereignty over the Adriatic Sea. Graswinckel
denies the claim, but as usual he proves nothing.*

The State of Venice lays absolute claim to the dominion of the Adriatic Sea. Graswinckel¹ in his "Defense of the Freedom of the Sea," written in opposition to Burgus, denies the claim; but how am I to praise a man, although he has prattled a great deal in the sort of argument we are engaged in, against Selden, Burgus, and Welwod, whom nevertheless I had decided to pass over unpraised, so uninformed is he about everything, and such a plagiarist? Therefore, whether he affirms or denies, it is all the same; I know well enough, most illustrious Venetians, that you yourselves will not deny what you have always averred without reservation. There is no one of you who would not go away "angrier than the violent Adriatic"² if we should decide it had no ruler or some other ruler; and although learned men applaud you in remarkable books, as Joannes Palatius has approved of you,³ although they applaud your commentaries and counsels, nevertheless I may, with your permission, differ with them and with you.

*What has been said in behalf of the Venetians, and what can be said
besides.*

I have no wish to quarrel with authorities, I am eager for proofs; and I see that those who defend you best enumerate the following: that the Venetians, although they do not surround the Adriatic Sea entirely with their own dominion, rightly claim for themselves the sovereignty of that sea, provided a small part is left for the princes near the shore; that no one else has occupied that

¹ *Vindiciae maris liberi* [adversus Petrum Baptistam Burgum Reipublicae Genuensis in Mare Ligusticum dominii assertorem].

² [HORACE, *Odes*, bk. III, ll. 22-23.]

³ [GIOVANNI PALAZZI,] *De dominio maris*.

sea and that no one who thus far frequents it, possesses land bordering on it; that the Venetians have already held possession of that sea for several centuries, not by force, or secretly, or on sufferance; that after the fall of the Roman Empire they came, as it were, into a vacant possession, and have held it perpetually, so to speak, with the neighboring islands, castles, kings, and fleets looking on, and never with envious eyes; that therefore they were secure in their possession by prescription, without needing to show any other claim; that their possession is clear from the fact that Venice was founded on that very Adriatic Sea which is under discussion, from the annual celebration of its wedding ceremony, from continuous navigation, and from the victorious naval battles, in which they not only drove their enemies entirely out of that sea, but even subdued that great city of Rhodes, formerly the recognized mistress of the Adriatic.

Et dubitamus adhuc?

(And after all this do we still doubt?)⁴

The question must be settled by the principles underlying the origin of ownership. Following these the Venetians are not lords of the Adriatic, except where they possess it. They do not seem to possess at this time any of it except those parts which they control from the shore.

The question must be examined again and defined in the light of the principles which underlie the origin of ownership. Whatever extent of that sea they possess, without any question they control that much of it. But granted that they did at some time occupy the open Adriatic Sea; granted that at some time they possessed it, nevertheless it is true that now they do not possess any of it except those portions which they control from the shore.

The possession which for form's sake is shown by an annual betrothal of the sea must be considered quite apart from the question.

I have succeeded in Chapter III in proving sufficiently, I think, what kind of possession must be understood; therefore that annual wedding of the sea which is done for the sake of appearance is not sufficient, but it is necessary to cover the sea every day. And we cover it, when our fleets, after having justly driven other fleets away, sail a sea with the intent of being master of it, but when we have recalled these fleets to their home waters, we cease to possess that sea, and with possession we lose ownership, and all its perquisites.

⁴[VERGIL, *Aeneid*, bk. VI, l. 806.]

No ship, bark, boat, skiff navigates the Adriatic Sea with the purpose of maintaining possession of it. Why ordinary voyages are not sufficient to establish possession.

If any ship, bark, boat, or skiff proceeds to spread its sails and double back and forth on a course with intention of keeping possession of a sea,⁵ quite another statement must be made, for in such a case we neither withdraw from the sea nor from sovereignty. Nevertheless not just any kind of navigation is sufficient to establish the fact mentioned, but it is a navigation instituted with the intention of preserving the sovereignty sought, as we have shown in Chapter III. As for the rest, no day goes by but that Venetians embark on ships and frequent the Adriatic Sea, but with another purpose than sovereignty. This man sails forth that he may learn the customs of many men and become acquainted with their cities,⁶ that man

indocilis pauperiem pati
(untaught to brook privation)⁷

that he may make a fortune, and a third man that he may carry his wares off and away with him for the sake of a small profit.

Maritime trade makes many people sharers in many things, as Cicero says,⁸ and clearly under this one head is not comprised both mere livelihood and luxury; but those who sail thus out upon the sea, as nearly all do, are not at all solicitous about the dominion of the sea; they are turning their attention wholly to getting the largest financial return.

Nor have I ascertained that the Venetians sail for any other purpose, nor do I remember to have heard that they devote their attention, or ever did, to a perpetual guard of their sea, for the naval victories, of which we spoke above, have no bearing except on occupation alone, and not even on that, unless we gain possession of the sea by a just war. For if we expel others by force unjustly, we must not be called lords of the sea, but pirates.

Julius Pacius and others especially advocate for the Venetians ownership by prescription based on long possession. This is out of the question, if the matter lies between different rulers. Grotius nods a bit.

⁵ [Cf. HORACE, *Odes*, bk. I, 34, ll. 3-5: "nunc retrorsum | vela dare atque iterare cursus | cogor relictos."]

⁶ [Cf. HORACE, *Epistles*, bk. I, 2, ll. 19-20: "Qui, domitor, Troiae, multorum providus urbes | et mores hominum inspexit."]

⁷ [HORACE, *Odes*, bk. I, 1, l. 18.]

⁸ *De officiis*, bk. I, § 151: "Mercatura . . . multa undique apportans multisque sine vanitate impertiens."]

I know that Julius Pacius⁹ and others, who professedly and incidentally speak of the maritime dominion of the Venetians, advocate prescription based on a long period of time, resting heavily on that support. But Hugo Grotius, and Vázquez as quoted by Grotius,¹⁰ have shown that sovereignty of the seas is not to be sought in long possession. And how can a method of acquisition which comes only from the civil law bind different rulers? Grotius indeed employs this reasoning, but happily rather moderately because he has again¹¹ admitted the former view. So now it is commonly admitted that if there exist the tacit concessions, proofs, presumptions and other supports, which he mentions, it would be just and right that strangers be excluded rather because of these facts than because of the right of prescription by lapse of time.

387

Although prescription may obtain among different powers in turn, nevertheless in the case of the sea prescription is not to be admitted.

But truly, so far as I am concerned, you may discard what there is of those presumptions, and what must be left to conjectures, and you will find that the feelings of the nations are wholly in opposition to the prescription of the sea, and that they leave no method unused of declaring earnestly their wish in the matter. The public acts of nations testify to this, each one proves it by its own example every day, because while one nation is transferring the sea to its own sovereignty, another comes into it against the will of the first, and by continuous navigation disturbs its possession, if such is the claim of the nation.

I should not wish it to be said that I think the one rightly disturbed if possession be just, but I should like to show that from a different source come the proofs, presumptions, and conjectures, by which prescription has been satisfactorily allowed among different empires in turn.

Prescription does not proceed out of a praetor's edict. Possession is lacking, and especially possession which goes back beyond the memory of men.

Nay, more! if these things must be determined from the edict of a praetor, it is so far from our intention to grant to any ruler continuous possession of the sea—which indeed is sufficient to establish prescription—that on the contrary we shall say and show

⁹ *De dominio maris Hadriatici.* ¹⁰ *Mare liberum*, ch. 7.

¹¹ *De jure belli ac pacis*, bk. II, ch. 4.

that not even today is anyone seen to possess any sea, much less to have possessed it at a time of which remembrance does not now exist; and yet those very men who flatter the powerful by conceding them this protection of iniquity, themselves desire possession, and a long one at that.

What Grotius and Vázquez seem to have stated correctly on this subject, and what incorrectly.

But I need say no more, as Grotius and Vázquez appear as advocates, for they have demolished usucaption of the sea with those arguments—as my arguments would doubtless do—if you would take what they themselves say in regard to the natural opposition of the sea to prescription, as being a *res communis* according to the law of nature and the law of nations, and as being a thing which can not be considered as property, which can not be possessed, nor quasi-possessed, nor alienated. There are also other arguments about which I shall have something to say in my last chapter.

Burgus has taken up cudgels for the sovereignty of the Genoese over the Ligurian Sea, and has used nearly the same arguments as others have used on behalf of the English and Venetians.

Let us grant practically the same arguments in regard to the Genoese, since Petrus Baptista Burgus¹² has said almost the same things in their behalf.

388

History tells how famously, even against the Venetians themselves, the Genoese strove for the dominion of the sea. But whether they possess the Ligurian Sea, which they call *theirs*, as if they had bought it with scales and money, or whether they do not, is a question which must be considered.

How the Genoese seem to possess their sea, and yet how as things now stand they do not possess it. A long account of the reasons therefor.

Indeed they do seem to possess it, if what the writers of Genoese history say is true, namely, that they have for the protection of the Ligurian Sea a standing fleet of triremes, with which they keep off the barbarians of Africa—and anyone else they please—and by means of which they protect themselves and their islands, thus matching the example of the Romans in the entire Mediterranean. Well done indeed! and unless that zeal and desire for possession shall

¹² [PIETRO BATTISTA BORGIO,] in his book *De dominio serenissimæ Genuensis reipublicæ in mari Ligustico*.

have abated, I may be brought to the point of declaring the Genoese the masters of the Ligurian Sea, and of changing the opinion which I have given that today no sea is held under control! But it is of the highest importance to know where that post of the triremes is, and whether they are always out on watch, for if they are being kept unprepared on the beach or in harbors, I fear that the accuracy of such possession will have lessened. And I know from reliable authorities that the Genoese are now in this very condition; they have triremes, but at the home port, not out on the Ligurian Sea; they do not fit them for service for other reasons unless it seems to be to the public interest to clear the sea of their neighbors, the Africans, or for some such similar purpose. However, the Venetians do no differently, nor does the Pope, when the pirates infest the sea. Nevertheless on that account I should not wish to hear that they were masters of the sea. Not any sort of navigation whatever suffices for possession, nor any sort of possession whatever for sovereignty; and why this is not enough, has been sufficiently and more than sufficiently recognized from what has already been said.

The King of France arrogates to himself without justice the Mediterranean Sea. Why he must be driven out.

389 But since authority over the sea is not extended beyond the control exercised by the land, unless occupation and possession are added, it will be easily granted that the King of France unlawfully arrogates to himself authority in the Mediterranean Sea, concerning which there was some agreement made in 1657 between Louis XIV, now King of France, and the States-General of the Low Countries; he claimed that sea as his own as the representative of them all jointly. But it is certain that such a little stretch of coastland as the French possess on the Mediterranean Sea, suffices not at all for such a claim, nor have they such a number of ships as is sufficient for the occupation and possession of that sea, nor, if they had, could such possession be maintained to the prejudice of others, who also possess great stretches of coast on that sea, and are masters of it in accordance with their share of the coast.

CHAPTER VII

WHETHER ANY SEAS ARE SUBJECT TO THE NETHERLAND FEDERATION. IN THE VAST OCEAN NO ONE HAS A RIGHT, EXCEPT TO THAT PART ADJACENT TO THE LAND

The people of the Low Countries, content in the use and profit of the sea, do not claim any dominion over it. Nevertheless they have always ruled the adjacent seas and straits. How and why they ruled the Zuider Zee, and still rule it.

I am not the sort of person who will lie for the benefit of my own people. It is some time since the Netherlanders excelled in naval glory, but I do not remember that I read that they possess the open sea or that they ever possessed it with intent of ownership. Nay, their modesty is so great that, content in the use and enjoyment of the sea, they neither arrogate to themselves sovereignty, nor do they envy others who are delighted by pride of names alone. Nevertheless they always ruled the adjacent seas and straits; and in this manner the Netherlanders seem formerly to have dominated as rulers the sea which we commonly call the Zuider Zee, inasmuch as they compassed it with their surrounding islands and uninterrupted authority.

A charter for the Zuider Zee was granted by Philip of Burgundy to the people of Amsterdam, and disturbances arose because of it. Even the Frisians raised a disturbance, and how the matter was settled.

In this connection may be observed the charter of Philip of Burgundy by which on May 16, 1452, he granted to the people of Amsterdam the right to exact certain moneys from those who sail through that sea, because of the lighthouse, the beacons, and the buoys, which the Amsterdammers had in that sea. But this was later taken from them because they were unwilling to take up arms against Philip II, King of the Spains, and the Prince of Orange, in his own name and in the name of Philip, on February 9, 1573, gave it to the people of Enkhuizen, upon which there followed great disturbances. 390

But afterwards when the dominion of the King of the Spains had been shaken off, and the Frisians, who are masters on the other side of that sea, themselves began to rule it, it was a question whether they were also bound to that money payment, and when the matter was compromised by a board of arbitration, they were freed of that burden on September 4, 1601, unless they should convey their merchandise into Holland for sale.

The charter of Maximilian by which he gave the people of Enkhuizen a territory on the sea a thousand miles square.

And there must be taken into account the charter of Maximilian, Emperor of Germany, which he as guardian of Philip of Austria, on December 20 in the year 1492, gave to the people of Enkhuizen, by which territory on the sea 1000 miles square was given to them, as well as the right of enforcing the law there exactly as if in their own city of Enkhuizen. In doing so he acted more properly, unless I am mistaken, than did Caepolla, who¹ granted the Venetians the same right in the entire Adriatic as they had in the city of Venice. But enough was said about that in the preceding chapter.

The control of the continent is in that case to be recognized in a broad sense. Examples from Dio Chrysostom, and the Consuetudo of Middelburg. Why this latitude seems to have been allowed, and how perplexing the question thus became.

At all events the authority of the land properly determines the sovereignty of the maritime belt, but because that is stronger in one place and more widely extended in another, it is agreed that sovereignty be accepted in a broad sense and with considerable latitude. Maximilian thus accepted it, and so did Augustus, when he gave absolutely to the city of Tarsus ἐξουσίαν τοῦ ποταμοῦ καὶ τῆς θαλάσσης τῆς κατ' αὐτὴν (authority over the river and the sea at its mouth), as Dio Chrysostom relates.²

Nor do I understand differently the statement of the Middelburg *Consuetudo*,³ namely, that the bailiff of the waters (as he is called) has jurisdiction to the farthest boundary of Flanders. And this latitude seems to have been intended for the bringing forward of trifles and subterfuges, which could be promoted in regard to the dominion over the continent; but either I am mistaken, or a larger matter is involved in it, for it is certainly clear in other circumstances if you

¹ In his book *De seruitutibus, tam urbanorum, quam rusticorum praediorum*, ch. 26.

² *Oration 34*. [The text as given is substantially correct.]

³ Tit. 1, § 4.

encourage laxity of this sort, the matter forthwith is made most uncertain.

The vast ocean can not be possessed. All the ships of all rulers are not sufficient for its possession. Not even the Atlantic Ocean is guarded by fleets in the prescribed manner. The Portuguese claim the Atlantic as their own.

Thus far we have spoken about the Mediterranean seas; we should add something concerning the vast ocean. The fact is certainly patent that this is not occupied and clearly can not be possessed; for all the ships of all the rulers would not in any way be sufficient for holding it in possession. Why, today no ruler has guarded by his fleets in the prescribed manner even the Atlantic Ocean, a small portion of the great high sea. Wherefore no one can justify a legal individual right over it. Nevertheless the Portuguese claim both other parts of the ocean, and the Atlantic too, as can be seen from the claims which Selden mentions.⁴ 391

But the Spaniards, according to common report, claim the entire expanse of ocean. For the purpose of showing this claim to be false, their titles are spread out and punctuated in various ways.

It is also commonly reported of the Spaniards that they claim the control of the high seas for themselves. Indeed Hugo Grotius⁵ represents Heemskerck, the Admiral of the Netherlands, speaking as if the Spaniards boasted of their empire over the ocean in the titles of their kings, and Selden⁶ also refers to the fact that among the titles of Emperor Charles V may be read: *Konig van Castille, van Leon, van Grenade . . . van de eylanden en vaste landen, van de Zee Oceaen* (King of Castile, of Leon, of Granada . . . of the islands and *terrae firmae*, of the wide ocean), etc., but incorrectly, since the phrase *van de Zee Oceaen* belongs to the preceding clause, as if it had been written, as it sometimes was written in the titles of later kings, *van de eylanden en vaste landen der Zee Oceaen* (of the islands and *terrae firmae* [i.e., continents] of the wide ocean). The punctuation of the other writers is wrong, as we learn from the Spanish titles, which usually run as follows: *Rey de las Islas, y terra firma del mar Oceano*. Indeed in the ordinary language of the Nether-

⁴ *Mare clausum*, bk. 1, ch. 17.

⁵ *Annales [de rebus Belgicis]*, bk. xvi, p. 733 of my copy [p. 884 of the English translation of London, 1665].

⁶ In the above-mentioned ch. 17. [Selden gives the titles in high Dutch as follows: "Konig-
under Insulen Canariæ, auch der Insulen Indiarum, und Terræ firmæ, des Maers Oceani."]

landers I have several times seen the phrase, *van de Zee Oceaen*, used without punctuation.

These citations show and Vázquez clearly shows⁷ that the Kings of the Spains refrained from using a title to the sea, and Selden afterwards was overinclined to it. Heemskerk's statement as given by Grotius is a piece of the exaggerated haughtiness of the Spaniards, and since that is usually a matter of military bluster, nothing is proved from it.

Sovereignty over the whole ocean can not pass legally to anyone, but part of it can so pass, and why this is so.

392 But be these matters as they may, they are nothing at all to us, who dispute about one question only, namely, that the ocean can not pass into the sovereignty of anyone, for since possession is not able to bring this about, nothing at all has brought it about. And in truth we can not possess the whole ocean, yet we can possess a part of it; but who has made a trial of this? The Romans perhaps in the British sea, but besides them, since the time the ocean has separated the hemispheres, no one.

Moreover, I speak of the ocean, which is not near the lands of rulers or subjects to them, where there is nothing but sea and sky,⁸ and where that control which is appropriate in the sea adjacent to the land does not exist.

The Spaniards possess the shores on both sides of the ocean, yet this does not help their claim.

No one, I repeat, has ever possessed this Atlantic Ocean; nor is the possession of Spain on one side of it and of America on the other of any advantage at all to the Spaniards in feeling that they possess it. In a word, then, possession of land on both sides of a sea puts it under subjection, when it is so possessed from both sides, that it may be seen to be held under control from the land, as happens in narrow straits. This has been alleged regarding the passage into the Baltic Sea, and also regarding the Byzantine strait [the Bosphorus] and the straits of Hercules [Gibraltar]. By controlling these two the Romans dominated the Mediterranean Sea, which they encompassed with their wide-spread dominion, and, that nothing might be lacking, controlled by the great number of their fleets and defended by the power of their navy.

⁷ *Controversiae illustres*, bk. II, ch. 89, § 30.

⁸ [Cf. OVID, *Tristia*, bk. I, 2, l. 23: "quocumque aspicio, nihil est nisi pontus et aër."]

Beyond the Pillars of Hercules the Romans had no legal right. The ocean is excluded from their dominion according both to Vergil and to Livy.

Therefore these Romans themselves had no legal right beyond the Pillars of Hercules, that is, no dominion over the ocean. Hence in speaking of the Romans as lords of the world, or of Julius⁹ Caesar who represented them, it was not Vergil, nor some Jupiter, but an oracle of the law that seems to have made the pronouncement:

Imperium Oceano, famam qui terminet astris
(Whose empire ocean, and whose fame the skies
Alone shall bound.)¹⁰

And in the same vein is the statement attributed in Livy¹¹ to Marcus Acilius Glabrio who said to his soldiers: "What then shall we lack, but that, from Gades (Cadiz) to the Red Sea, we shall set our boundaries at the ocean." By both writers, therefore, the ocean, which we designate thus *per eminentiam*, is excluded from the dominion [of the Romans].

If a subject ocean is mentioned in other writers, the British ocean is probably to be understood.

It is indeed certain that among the writers on Roman history the ocean is not once mentioned as being subject, but from the passages collected by Selden,¹² one may fairly conclude that the words refer to the British ocean or to that strait which lies between France and England [the English Channel]. Nay, more, if any testimony of a poet or orator who thought otherwise could be produced, it would not prove sovereignty unless possession of that same ocean were proved. 393

Today no part of the ocean is possessed by anyone. The liberty of navigating to East India is maintained against the Portuguese on that ground alone.

Moreover, since no nation has ever had this possession, or has it today, it is sufficiently clear that the ocean has never yielded and

⁹ [Bynkershoek, following Vergil, speaks of Augustus Caesar as Julius. In the passage from which the line quoted above is taken Vergil is eulogizing Augustus as of Trojan origin and a descendant of Iulus.]

¹⁰ *Aeneid*, bkr., l. 291 [or l. 285, if we exclude the four lines of the prooemium, which were rejected by Vergil's literary executors and are regularly omitted. The translation is that by DRYDEN in *The Works of the English Poets* (London, 1810), vol. xix, p. 361].

¹¹ Bk. xxxvi, 17, [§ 15].

¹² *Mare clausum*, bk. ii, ch. 4.

does not today yield to any master except those small portions of itself which wash the various coasts, and which are under sovereignty because of their adjacence. And for this reason there is almost no nation which does not possess some little part of the ocean, for according to the opinion of Dionysius the African,¹³ which is true:

Ὠκεανὸς περιέεδραμε γαῖαν ἅπασαν
(The ocean flowed around all the earth).

The remainder of the ocean is not possessed, nor held under sovereignty. Naïve are the Portuguese who oppose this, and naïve in his *Mare liberum* is Hugo Grotius who has contradicted them; the Portuguese, because they are so strenuously absurd, and Grotius because in refuting their foolishness, he simply transfers to the whole sea what he ought merely to have said—and what it had sufficed to have said—about the ocean.

There is no need of a long effort. When I mention the Northern, the Atlantic, the Ethiopian, the Indian Oceans, and say that of these not one is possessed by the Portuguese, I say enough. Those are free seas, on which the Netherlands have sailed to East India.

The great effort of Grotius. His arguments not quite suitable in this case.

It is indeed quite obvious that the Portuguese can not even by falsehood allege possession, much less *have* possession, and at the same time it is certain that, if those arguments hold good which we have maintained do support us, out of that fact alone the liberty of navigating to the Indies by any route on the ocean is properly defended, and we are safe in paying no attention to the arguments of Grotius, brought together in such numbers from every source, and, as it seems, not quite all true. Why this seems to be the case will be told in our last chapter.

394 The account has been given of those who today ascribe to themselves the sovereignty of the sea, and how it is done with no legal right. There are also others, who pride themselves on such sovereignty, but it is hardly worth our while to suppress the bombast of Asia or the arrogant pretensions of the lesser nations of Europe; enough has been said even to refute them. I add nothing to my opinion except this interpretation: The whole expanse of the ocean can not be subjected to dominion, but part of it can, and all the inland seas, however many there are, can be thus subjected.

¹³ [More commonly called DIONYSIUS PERIEGETES, because he was the author of *A Description* (περιήγησις) of the *Habitable World*, from which the line quoted above is taken. This line (l. 41) may be found in *Geographi Graeci minores* (ed. by Karl Müller, Paris, 1861), vol. II, p. 106.]

*Brief discussion of what we call an "open" sea and what a
"closed" sea.*

Nevertheless there is no inland sea, nor any part of the ocean held under the sway of any ruler, except where it is in the control of the adjacent land. We call that a MARE LIBERUM, which is not possessed or which *in toto* can not be possessed, and we call that a MARE CLAUSUM, which after legal occupation by one ship or more was once possessed, and if the fates so will, will be held in possession hereafter. But we recognize that no sea is now under subjection, since it is not sufficient to have had such an intention, nay, not even is it sufficient to have occupied and possessed it at some time, unless the possession still lasts. But that sort of possession no nation has today.

And so here we place in the same seat liberty and dominion, which are by no means easily combined.¹⁴

¹⁴ [Cf. TACITUS, *Agricola*, ch. 3: "Nerva Caesar res olim dissociabiles miscuerit, principatum ac libertatem"; and *History*, bk. iv, ch. 64: "haud facile libertas et domini miscentur."]

CHAPTER VIII

EVIDENCE BY WHICH DOMINION OVER THE SEA IS PROVED CONCERNING THE NATIONS WHICH HAVE GAINED POSSESSION OF THE SEA

The ancient writers sometimes affirm and sometimes deny the sovereignty of the sea. How far either type of statement can be granted. Passages collected in favor of the sovereignty of the sea. Some from certain authors, who are cited; others quoted from Herodian, the Anthology, Lucan, Claudian, etc.

An opinion may be so prejudiced that its authority carries even without argument: such was formerly the case, and the same thing obtains today; nevertheless if we examine the matter, it is found to be faulty.

395 There are passages from the historians, and from the poets too, not to seem to omit anything, which simply assert or deny that the sea can be subjected to sovereignty. I set almost no store by either the one or the other, although they are commended by antiquity. I do not shun authority, if sensible reasons are forthcoming, for without them no progress will easily be made. He who thinks otherwise uses his imagination. Moreover, I should think that we had brought forward reasons enough by which our contention can be proved. Still if there is yet concern to know where dominion of the sea is ascribed to rulers, to the Romans among the rest, those citations have been sedulously collected even from the Hebrew law by John Selden,¹ Petrus Baptista Burgus,² Hugo Grotius,³ Jacques Godefroy,⁴ and, if you like, you may add to those Philo Judaeus in various places.⁵ Herodian says in one place: *Τὴν δὲ γῆς καὶ θαλάττης τοσαύτην ἀρχὴν ὠνησάμενός τις αἰσχρῶς*, "but who basely auctioned off such a (*sc.* Roman) dominion over land and sea," etc.⁶; and in another place: *ἐν ὅπλοις Ἰταλιῶται πάντες ἦσαν, καὶ γῆν καὶ θάλατταν ἐκτήσαντο*, "all the Italians were in arms and got possession of both land and sea."⁷ He straightway also attributes to

¹ *Mare clausum*, throughout.

² *De dominio serenissimae Genuensis reipublicae in mari Ligustico*.

³ *De jure belli ac pacis*, bk. II, ch. 3, no. 13, and annotations thereon.

⁴ On l. 9, ff., *De lege Rhodia de iactu* [= *Dig.*, 14, 2, 9], ch. 12.

⁵ In his book *Legatio ad Gaium*, pp. 829, 834 and 845 of my copy [Lyons, 1555; pp. 546, 552 and 546 in MANGÉY's pagination].

⁶ [*Ab excessu divi Marci*] bk. II, ch. 36 [=bk. II, ch. 10, § 4 of the 1855 edition].

⁷ [*Ab excessu divi Marci*] bk. II, ch. 38 [=bk. II, ch. 11, § 4 of the 1855 edition].

them *πᾶν κλίμα οὐρανοῦ*, "all the expanse of heaven," in order that thus nothing may be left out.

Polybius also mentions the dominion of the sea several times,⁸ but there is no time to locate the passages, or to speak what Erinna Lesbia, as quoted in Stobaeus,⁹ has to say in this matter. But the most charming thing concerning the Romans is the epigram¹⁰ of Alphaeus of Mitylene:

*Κλεῖε, θεός, μέγαλοιο πύλας ἀκμῆτας Ὀλύμπου·
Φρούρει, Ζεῦ, ζαθέαν αἰθέρος ἀκρόπολιν.
Ἦδη γὰρ καὶ πόντος, ὑπέξευκται δορὶ Ῥώμης,
Καὶ χθών· οὐρανὴ δ' οἶμος ἔτ' ἔστ' ἄβατος.*

And the mate to that is the epigram¹¹ of Alcaeus of Messene on Philip:

*Μακύνου τείχη, Ζεῦ Ὀλύμπιε· ρέξε Φίλιππος
Ἀμβατά· χαλκείας κλεῖε πύλας μακάρων,
Καὶ γὰρ χθών καὶ πόντος ὑπὸ σκήπτροισι Φιλίππου
Δέδμανται· λοιπὰ δ' ἂ πρὸς Ὀλυμπον ὁδός.*

A Christian of Florence turned both into very bad Latin verse, and the first can be rendered about as follows:

396

Claude, Deus, magni portas sublimis Olympi,
Custodi caelum, Jupiter, ipse tuum:
Namque mare et tellus Romano ducta triumpho,
Nunc superest caeli Regia sola tui.
(Close the great gates, O God, which guard thy lofty Olympus,
Guard, O Jupiter, the heaven which is thine;
Earth and the sea alike have been led in the Roman triumph,
Now as kingdom thine, Heaven alone remains.)

The other I render in this way:

Macyni muros potuit superare Philippus,
Claude fores caeli nunc, Deus alme, tui:
Ecce mare et terrae scepro subjecta Philippi,
Ad tua jam tantum sydera restat iter.
(Philip was able to conquer the mighty walls of Macynus,
Close thy heavenly gates, close them now, kind Jove;
Lo! both land and sea to Philip now have fallen
So there remains to thee only a path 'mong the stars.)

⁸ Bk. i, c 3, 7, 16, 20, 25 and 39.

⁹ *Δογὸς περὶ Ἀνδρείας* [= vol. i, no. 7, excerpt 13, pp. 204-205 of the 1822 edition].

¹⁰ *Anthologia Graeca*, bk. i, ch. 5, no. 19 [= bk. ix, no. 526, pp. 294-295 of PATON's edition].

¹¹ *Anthologia Graeca*, bk. i, ch. 5, no. 17 [= bk. ix, no. 518, pp. 286-287 of PATON's edition].

See also another epigram ¹² on Philip:

Κοίρανος Εὐρώπας, ὁ καὶ εἰν ἄλλι καὶ κατὰ χέρσον,
Τόσσον ἀναξ θνατῶν, Ζεὺς ὅσον ἀθανάτων

Qui regit Europam, terris dominator et undis,
Non secus ac caelo Jupiter, imperitat.
(He that Europe rules is lord of the land and the waters,
Not otherwise than Jove lords it over the heavens), etc.

But not to leave the Romans, they were "lords over the seas and the land," as Papinius Statius says of Domitian,¹³ and this fact is attested here and there in the writers. Lucan ¹⁴ says:

Quae mare, quae terras, quae totum possidet Orbem,
Non cepit fortuna duos.
(She who possesses the sea and the lands and the world undivided,
Fortune, has not allowed that two [should rule o'er the people].)

And Claudian ¹⁵ says:

Te tuus Oceanus natali gurgite lassum
Excipit, et notis Hispania proluit undis.
(When you are weary your ocean in native waters receives you,
And with her well-known waves Hispania washes you fondly.)

And a little farther on:

Unanimi fratres, quorum mare terraque fatis
Debentur.
(Brothers of but one mind, to whom the land and the sea, too,
Are by destiny due.)

A certain inscription from Thyatira. Why we bring it forward.

Hence also an inscription from Thyatira which George Wheler, the learned Englishman, has given in his *Journey into Greece*.¹⁶ It calls the Roman emperor "Lord of the land and the sea." It runs as follows:

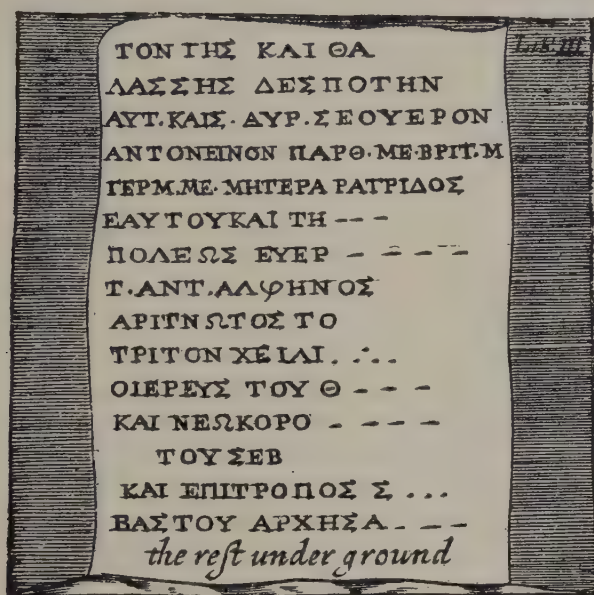
¹² *Anthologia Graeca*, bk. I, ch. 5, last no. [=bk. xvi (the Planudean Appendix), no. 6, pp. 160-161 of PATON's edition. The inexactness of the Latin rendering of the Greek may be judged by comparing the English translation of the Latin above with PATON's translation of the original Greek.]

¹³ *Thebaid*, bk. I, l. 31.

¹⁴ *Pharsalia* [= *De bello civili*], bk. I, l. 110.

¹⁵ *De tertio consulatu Honorii*, [vii, ll. 176-177; ll. 189-190. CLAUDIAN has *debetur*, not *debentur*, in l. 190].

¹⁶ Part I, bk. III, p. 213 of my copy. [BYNKERSHOEK evidently is quoting from the Amsterdam 1689 translation in two volumes. There are some inaccuracies in his quotation, as will be evident from a comparison of the cut here reproduced from p. 232 of the original 1682 edition of WHELER's work with the quotation on p. 397 (below) of BYNKERSHOEK's treatise, the eighth and sixteenth lines being omitted entirely by the latter. The text of the inscription in its full form is given in the *Corpus Inscriptionum Graecarum*, 3484 B, and appears here immediately after the cut.]



[τὸν γῆς καὶ θαλάσσης δεσπότην, Αὐτ(οκράτορα) Καίσ(αρα) Μ. Αὐρ(ήλιον) Σεουήρον Ἀντωνείνον, Παρθ(ικὸν) μέ(γιστον), Βριτ(αν-
 νικὸν) μέ(γιστον), Γερμ(ανικὸν) μέ(γιστον), πατέρα πατρίδος, τὸν
 ἑαυτοῦ καὶ τῆς πόλεως εὐεργέτην, Τ. Ἀντ(ώνιος) Ἀλφῆνος Ἀρίγνω-
 τος, τὸ τρίτον χιλιάρχος, ὁ ἱερεὺς τοῦ θεοῦ καὶ νεωκόρος τοῦ
 Σεβ(αστοῦ) καὶ ἐπίτροπος Σεβαστοῦ ἄρκης Λιουϊανῆς.]

(To the Lord of the earth and the sea, Imperator, Caesar M. Aurelius Severus Antoninus, Parthicus Maximus, Britannicus Maximus, Germanicus Maximus, father of his country, benefactor to himself and to the city, T. Antonius Alphenus Arignotus, tribune of the soldiers for the third time, the priest of the god, and the verger of the [temple] of Augustus, and the overseer of the Livian shrine of Augustus.)

I have decided to reproduce this inscription, although it is fragmentary, both because I should advise that instead of the Greek word *ΤΗΣ* (*the*), as is read now in the first line, either by typographical error, or in the faulty cutting of the marble, there should be read *ΓΗΣ* (*land*), and because that famous Antoninus is "Lord of the land and the sea," as it was he who claimed that he was "ruler of the universe," in the law which we have already explained.¹⁷

¹⁷ L. 9, ff., *De lege Rhodia de iactu* [=Dig., 14, 2, 9. This treatise immediately precedes the *De dominio maris* in the Latin original from which the present translation was made.]

Authors are not lacking who have given evidence for the freedom of the sea; but those who have argued for sovereignty always come out ahead, whether we count their opinions or weigh their importance. Authorities in behalf of a subject sea are sometimes to be suspected. How this should be determined.

It would be not at all difficult to cite still other passages in support of the dominion of the sea, even more excellent ones than some of Selden's are, but *cui bono dicat Cassius*.¹⁸ Grotius has them and he has summoned for his own protection authorities in favor of the freedom of the sea, some for one purpose, others for another, but whether we count the opinions or weigh them, those who recognize the dominion of the sea will always win. Not that I think those seas, about which as subject seas, proofs are being brought forward, had been continuously held in subjection, but that I think, if one excepts the ocean, they could have been brought under subjection. The fact of occupation and possession, as we have clearly proved, will have shown whether indeed they were brought under subjection or not.

A passage of Dionysius of Halicarnassus on the maritime dominion of the Romans is arraigned as false. How, when, and to what extent the Romans had dominion over the seas. The testimonies of the writers must be admitted or refuted according to the evidence.

398 From these citations we learn furthermore what must have been the belief concerning that well-known saying of Dionysius of Halicarnassus,¹⁹ where he says that the Roman people πάσης κρατεῖν θαλάσσης, οὐ μόνον τῆς ἐντὸς Ἑρακλείων στηλῶν, ἀλλὰ καὶ τῆς Ὠκεανίτιδος, ὅση πλείσθαι μὴ ἀδύνατός ἐστι, "have the sovereignty over the sea, not only of that part which is inside the Pillars of Hercules, but also over as much of the ocean as they navigate."

This is not true as regards the ocean. The Romans never possessed as wide an extent of it as is navigated now or was then navigated; nay, more, outside the Pillars of Hercules they possessed none of it except the British Sea. But inside the Pillars they possessed the entire Mediterranean Sea, thus "terminating their empire at the ocean," as the Romans whom we quoted in Chapter VII said in a better and truer way. Indeed they did not even always possess that same Mediterranean Sea, and therefore were not always masters of it.

Let us be mindful of that, because we have just referred to the guard of the fleets both in the Mediterranean and the British Seas,

¹⁸ ["Cui bono" is an expression attributed to Lucius Cassius, a very severe judge of the second century B. C.]

¹⁹ [Antiquitates Romanae, bk. i, ch. 3, §3.]

and let us regard it as settled that the Romans were at that time and at no other time masters of the sea beyond the maritime belt. And finally in accordance with these facts let us accept the proofs which meet us concerning the maritime dominion of the Romans. Otherwise, if this can not be done, let us believe that these testimonies were given either out of ignorance, or from arrogance, or, as is especially proper for poets, in flattery.

Examples of nations which have become masters of the sea.

In the cases of the nations which have become masters of the sea, there is more weight, it is true. For if it be proved that the sea has been legally occupied and legally possessed by some nations, then there is no reason for us to doubt longer about its sovereignty. And indeed Castor the Rhodian is said to have been the first who wrote "On the Lords of the Sea." There are people who say that Eusebius drew from that work what he says in his *Chronicon* about those who have held control of the sea through the various ages of the world.

Selden almost makes a display of this list of Eusebius,²⁰ reviewing in order as the masters of the sea the Cretan, Lydians, Pelasgi, Thracians, Rhodians, Phrygians, Cyprians, Phoenicians, Egyptians, Milesians, Carians, Lesbians, Phocaeans, Corinthians, Ionians, Naxians, Eretrians, and Aeginetans. 399

Concerning the maritime dominion of the Cretans, the Cyprians, and the Rhodians, Meurisius has much to say.²¹ Then Selden²² enumerates the dominions over the sea exercised by the Lacedaemonians, Athenians and others, using the authors of the early period as witnesses of the fact. Concerning the Lacedaemonians it is possible to add what Plutarch relates.²³ But what is the need of adding anything when Selden and Burgus run through a thousand examples and authorities, by which they proceed to confirm the sovereignty of the sea in the hands of the Greeks and Romans from time out of mind.

I neither wait for the examples of a more recent age, nor do I hear Burgus proclaiming them abroad. We seem to have enough to handle with the Romans themselves, whom we have proved to have had at one time perfect control of the sea, and with the Greeks, if the word *θαλασσοκρατεῖν* (to rule the sea) which the Greek writers often use in referring both to their affairs and those of the

²⁰ *Mare clausum*, bk. I, ch. 10.

²¹ Respectively, in his *Creta*, bk. III, ch. 3; *Cyprus*, bk. II, ch. 23; *Rhodus*, bk. I, ch. 17. [These three works are bound together under the title *Creta, Cyprus, Rhodus, sive de nobilissimarum harum insularum rebus et antiquitatibus* in the 1675 edition.]

²² [*Mare clausum*,] bk. I, ch. 11, 12 et seq.

²³ *Apophthegmata Laconica*, p. 414 of my copy [p. 302 of the 1568 edition], and *De animi tranquillitate*, pp. 254 and 264 of my copy [pp. 908 and 935 of WYTTENBACH's edition].

Romans, does not signify "to obtain dominion over the sea," but merely "to excel in naval force," "to be very powerful on the sea."

Casaubon's objection to the word θαλασσοκρατεῖν. It is widely defended on the ground of being sometimes taken to denote the dominion of the sea.

This is the sense in which Casaubon, against the common meaning, takes it.²⁴ And it is certainly true that θαλασσοκρατεῖν (to rule the sea) often means nothing else than ναυακρατεῖν "to excel in ships." Nevertheless it is no less true that this expression is quite often appropriated to denote the dominion of the sea, as it is or can be the best and greatest.

The argument for this matter is in the agreements and treaties by which the θαλασσοκρατήσαντες (sea-lords) by the rule of the empire, forbade navigating hither or thither, in this or that ship, and by all the other means of showing perfect sovereignty. Grotius, Selden and Burgus have vied with one another in setting forth agreements and treaties of this sort. Add to this the fact that the word θαλασσοκρατεῖν, howsoever common in this argument, may nevertheless not always be resorted to; sometimes ἀρχεῖν τῆς θαλάσσης (to rule the sea), κυριεύειν τῆς θαλάσσης (to be master of the sea), κύριον γίνεσθαι τῆς ἀρχῆς τῆς κατὰ θάλασσαν (to become master of the rule of the sea), and other such expressions as I have observed alone are suitable for proving the dominion over the sea. Finally, the Romans in speaking plainly of their own dominion on the sea and that of others before them, have repeatedly expressed the idea so roundly, that it is wrong to subvert these arguments because of a word whose meaning is ambiguous with the Greeks.

But with regard to these examples of nations let this statement hold: οὔτε πάντα, οὔτε παντοτε, ουτε παρὰ πάντων (neither all, nor everywhere, nor by all). It is probable, nay, true, that the sovereignty of the sea has been ascribed to some peoples, who either never held it or did not hold it as long as is commonly reported.

It is often believed that naval power does not differ from sovereignty over the sea, and therefore that sea robbers do not differ from sea lords; wherefore sometimes those have been called κύριοι τῆς θαλάσσης (lords of the sea), who had not even occupied the sea, that is to say, who had not entered it with intent to hold it for themselves, or who had not occupied it legally, but because of their greater power had disturbed and driven others away.

²⁴ In his commentary on *Polybius*, bk. i, p. 209.

The prejudgments of peoples must not be admitted too freely as evidence.

Again men of consequence have believed that occupation alone without continuous possession was sufficient both in ancient times and now for a claim to dominion over the sea, or if they desire possession, they may preserve it either by intent alone or by actual possession alone. From that come the masses of testimonies which each has drawn upon to defend his own seizure.

The obscurity of ancient times makes it impossible to make clear statements on these matters, and why. It is not even possible to be precise about the Romans although they were famous people. This question turns entirely upon fact.

Nevertheless we ought not rashly to postulate these testimonies as false, because in the great obscurity of ancient time we do not know whether the Cretans, Lydians, Pelasgi, and the others who are spoken of above, did really possess the sea at that time when sovereignty is attributed to them, or not. We know that the Romans really possessed and held in their own right the Mediterranean and British seas, but when exactly they began to possess them or when they gave up possession, no one could easily say, nor could anyone indeed precisely prove or refute those who with Cassandra in Lycophron sing about

Γῆς καὶ θαλάσσης σκῆπτρα καὶ μοναρχίαν.
(the scepter and monarchy of sea and land.)²⁵

401

This question turns upon fact. However, just as fact is often hidden from us in the history of ancient times, so it is not possible that in our day we allow any sovereignty of the outer sea to be thrust upon us, inasmuch as it is clearly manifest that today no sea is possessed by anyone, and certainly is not to be considered as an object of possession, because some persons were pleased to contrive something that resembled possession.

²⁵ [*Alexandra*, l. 1229.]

CHAPTER IX

THERE IS NOTHING IN THE LAW OF NATURE OR IN THE LAW OF NATIONS, OR EVEN IN ROMAN LAW THAT STANDS IN THE WAY OF SOVEREIGNTY OVER THE SEA

Grotius on the one hand denies plainly that the sea can be subjected to sovereignty, on the other he concedes this sovereignty over part of the sea, be it of a maritime belt or of open sea.

In order that our contention may not be with a crowd, let us select an advocate of a free sea. Whom better than Hugo Grotius can we choose? In a notable little book which he wrote on the freedom of the sea, he contends plainly that the sea can not be subjected to sovereignty, and in his book there is no circumlocution, no nonsense. Nevertheless, having changed somewhat¹ from the view expressed there, he grants in his work *De jure belli ac pacis*² that the sea can be occupied by those who possess the lands on both sides of it, "provided the part of the sea is not so large that when compared with the lands it may not seem to be a portion of them." But who could set the limits to such a portion? These limits are uncertain and perhaps impracticable, unless they are reduced to the rules which we have fixed in Chapter II in regard to maritime belts.

How he defines that part, claiming there is no ownership in this, but only dominion. Why nothing at all seems to come out of such an argument. Why that opinion was pleasing to Grotius.

Again³ he concedes also that a part of the high seas can be occupied by a naval army which consists in a fleet; but only a part, and this not in such a way that ownership is acquired, but dominion without ownership.

402 In very truth I do not see why if a small portion of the sea can be occupied by a small fleet, why, I repeat, a larger portion can not be occupied by a larger fleet, and thus by still larger fleets even the whole of the Mediterranean Sea. Surely the same principle of law which induced or extorted the first statement also confirms the last one.

¹ [Cf. VERGIL, *Aeneid*, bk. II, l. 274: "quantum mutatus ab illo | Hectore."]

² Bk. II, ch. 3, § 8.

³ *Ibid.*, ch. 3, § 13.

But in order that Grotius may introduce a dominion over the sea distinct from ownership, he relies upon the right which each man has set up for himself, a different right certainly from that which was given with a generous hand by nature to occupants, was received by the nations, and was confirmed by civil law. We said something above in Chapter IV about this matter.

Grotius seemed on his part to admit a certain dominion in order that he might collect in this order the testimonies of the ancients against his arguments, although among them there are some which express quite clearly a true sovereignty of the sea. But he denies particular ownership, in order that he may defend the principles he had exhibited with regard to the common ownership of the sea,⁴ for if this were secure the dominion of the sea might seem to be to a certain extent secure, but ownership could not.

Grotius' reasons, sought in natural law, are examined. Whether the sea, because it is sufficient for all, for that reason can not be occupied. The primitive community was abandoned because of the demand of necessity and the persuasiveness of utility. Utility is not properly given by Grotius.

And his underlying principles he derives, as is proper, from natural reason, for the civil law of each nation after all is of no effect here. The sea, he says, suffices all for every use, for drawing water, for fishing, for navigation; but necessity separated the sovereignties of things, since one thing could not support all people. Therefore all things must be considered to have remained in their primitive common holding which manifestly were so ordained that they could always offer their use to all alike, the reason for a departure from common holding thereupon ceasing.

But it is not true that the right of occupation flowed from necessity alone; utility, "utility which can almost be called the mother of justice and fairness,"⁵ must also here be made a partner in the matter. Necessity commanded occupation, utility persuaded to occupation. So that each person seems according to the rule of nature to have occupied what was necessary and useful to him.

The sea is more useful if it offers its use to me alone than if it offers its use to all.

But there is more than one kind of utility; a *res communis* can be made almost useless by promiscuous use, as often happens in a

403

⁴ *Ibid.*, ch. 2, [§ 3]; and *Mare liberum*, ch. 5.

⁵ [HORACE, *Satires*, bk. I, 3, l. 98.]

sea which has been fished out. But even if a *res comunis* offers perpetual use to everyone, it will nevertheless offer a greater use, if it is private property. If, for example, there should have been given to me alone the right to fish in this or that sea, it will be more useful than if that permission be given to everybody, and that above-mentioned utility, as it is always sought after, could thus also be considered greater in an occupied sea.

We have brought out in Chapter I from the natural first principles—as they are called—that every person is especially busied for his own profit; and those natural first principles convince us that we rightly become richer at the expense of others, provided it is not through injustice to others.

Another of Grotius' arguments: As there is no fixed boundary to the sea, therefore there is no sovereignty. To this there is objection, and it is proved that the boundary to sovereignty and possession is the same. What that boundary is.

Again Grotius says: "But indeed the sea is incapable of being occupied, inasmuch as it is a thing without boundaries, and without a boundary who shall have set up sovereignty?" I shall not say what Welwod,⁶ Strauch,⁷ and particularly Selden⁸ have said on this very matter. But I should like this to be noted; namely, that in our opinion the boundary of sovereignty is the same as the boundary of possession. We have seen above what the boundary of possession seems to be as regards maritime belts, and it is certain and definite in all respects. But there can be even less doubt what the boundary may be in the open sea, since this is shown by natural detention and by that continuous occupation which arises through naval guard ships, or—by what is the same thing—an uninterrupted navigation through those parts of the sea which we have occupied.

Still another reason from Grotius. The sea can not be possessed on account of its shifting and unstable nature. This argument is refuted in several ways, especially by an example drawn from rivers.

But we are in error, if the sea—as Grotius says—can not be possessed on account of its shifting and unstable nature. That is certainly looking for a knot in a bulrush! ⁹ Paulus ¹⁰ is authority for the statement that corporeal things can be possessed, and the sea is

⁶ *De dominio maris*, ch. 1.

⁷ *De imperio maris*, ch. 2.

⁸ *Mare clausum*, bk. 1, ch. 22.

⁹ [Cf. PLAUTUS, *Menaechmi*, l. 247: "in scirpo nodum quaeris"; TERENCE, *Andria*, l. 941: "nodum in scirpo quaeris"; and OTTO, *Sprichwörter*, s. v., *scirpum*.]

¹⁰ In l. 3, pr., ff., *De acquirenda vel amittenda possessione* [=Dig., 41, 2, 3, pr.].

absolutely among those things which can touch and be touched. Nay, Grotius himself admits that part of the sea can be occupied, although no occupation arises unless possession has been obtained, and although the same principle of law which applies to the parts applies also to the whole.

Therefore those things must not be tolerated which are now being commonly circulated on the authority of Grotius concerning the inconstant and ever changing nature of the sea.¹¹ For if on account of those statements it should be decided to deny ownership, a good share of our possessions will, alas, quickly perish! And what shall we say in regard to rivers? Grotius will readily admit that they belong to a nation, and will admit no less readily that they are driven and borne along in a very rapid course, even outstripping many seas in this respect. 404

Shores are also called "communia," nevertheless they are not without boundary, or of an uncertain and quick-changing nature. There is no point in what is said about the natural freedom of commerce and the opportunity for its transport.

Finally, the case of the shores is the same as that of the sea, if one listens to the Roman jurisconsults whom Grotius himself invokes. Are the shores therefore common property? Well, we shall soon see.

But why are they common property? because they can not be brought under sovereignty? because perchance they are boundless and without a limit, as the sea? No one will say that. Or is it because they are not capable of being possessed? because forsooth their shifting and inconstant nature likewise stands in the way? Grotius could not prove this theory in respect to the shores. We shall bring forward another argument which itself will be appropriate also to the sea, and nevertheless will not be an impediment to occupation or possession. Meanwhile I ask that those arguments be held in abeyance as well as others which—as if from natural law—in behalf of a free sea it is pleasing to introduce concerning the liberty of commerce, the power of passing through the sea granted to anyone you please, and other advantages which are of less note.

But truly I wonder why they do not deny with the same keenness that even the land can not be subjected to sovereignty, or why indeed they permit to all a common highway, road, or lane through all estates without agreements and stipulations, for in this way certainly after the taxes and imposts have been abolished, the freedom of trade would extend more and more widely, or—to speak more truly

¹¹ [Cf. VERGIL, *Aeneid*, bk. iv. l. 569: "Varium et mutabile semper | femina."]

—property would more quickly be adjusted to the pattern of the primitive community of use. It has seemed best to add this argument to those which Selden ¹² has proclaimed far and wide.

Nothing at all is found in the law of nations, which opposes sovereignty over the sea.

Our next task is to examine into the law of nations. There is nothing here to trouble us. Here is where reason is first, and reason is so far away from being at all in opposition to our fundamental principles that on the contrary there is nothing else which
 405 concerns me more. I think I have sufficiently expressed how great a bulwark this is for me. Selden alone has so heaped up for us all through his book the statements of perpetual and constant agreement of nations from the earliest times—as we have heard from our ancestors—down to the present day, that I shall not add another word.

Whether the authority of the Roman law holds, and how far it is applicable in this case.

Roman law comes next. Its authority, I admit, will not decide questions which belong to the law of nations. But who will deny that the testimony of men skilled in public and private law, who recorded a true philosophy both by their writings and opinions, did not always have, and does not yet today have the greatest possible weight? May it be far from us who profess jurisprudence to traduce our authorities, as does Welwod, as being “ignorant of natural law,” or as does Selden, as “being persons who hand on carelessly not only opinions which are counter to the best accepted customs of nations through nearly all ages, but also opinions which in turn run counter to their own statements.” ¹³

Their memory has always been sacred to us, and always will be while we live; those English, however, while they do not subscribe to what our authorities say about the common use of the sea, criticize more sharply than is fitting.

Let us consider or rather let us glance over some things, for it does not devolve upon us

Juris in Oceanum plenis descendere velis,
 Sive aliis trita turpiter ire via.
 (To set full sail upon the sea of law
 Or basely go the common beaten road.)

¹² *Mare clausum*, bk. 1, ch. 20, 21 and 22.

¹³ [Apparently not an exact quotation. Cf. SELDEN, *Mare clausum* (London, 1635), pp. 30, 69, 74 and 81.]

Those learned in Roman law reiterate all through their works that the sea is "commune." Passages to the point.

However it is most true that Roman law, when it describes the division and nature of property, constantly reiterates the common use of the sea, and is often given over entirely to illustrating this. The *Institutes* do so, and Marcian¹⁴ also says: "By natural law the following are common to all: air, flowing water, the sea, and consequently the sea-shore." In another place¹⁵ speaking of villas, buildings and monuments, he says: "These not being, like the sea itself, subjects of the *jus gentium*." Exactly the same is what Celsus¹⁶ said about the common use of the sea, and what Ulpian,¹⁷ who especially causes 406 trouble for Selden, said. There are also other passages of the same tenor, even among those learned in the Greek law, which, however, I am not seeking for or copying down.

How those who assert maritime sovereignty accept these passages.

One may give offense to the interpreters, who each according to his own bent of mind recognize a certain sovereignty over the sea, but who here are uncertain by what plan they may help their case. Some wish when the sea is called *commune* that this be so understood as if it were common property of Roman citizens; others admit the common use of the sea, and nevertheless admit the dominion of some nation or other; others say the sea is indeed common, but, as Marcian says, "according to natural law," by which also they concede without difficulty that the land is common; still others say that the ancient juriconsults rendered correct decisions, but that the customs of nations and of the Roman people itself gradually broke down the subtle distinctions of the law; some admit that they disdain those authorities; others that they are not clear to them. They have both laws and principles, which they claim they have derived from their own inner consciousness until they believe it, but lack of space forbids the attempt to mention them and to show how they have been misused.

It seems to the author that the sea is called "commune" for no other reason than that it was not occupied or possessed.

I think that the sea is called *commune* by our juriconsults for no other reason than that in the time of those ancient writers the

¹⁴ In l. 2, § 1, ff., *De divisione rerum* [=Dig., 1, 8, 2, § 1].

¹⁵ In l. 4, ff., *De divisione rerum* [=Dig., 1, 8, 4].

¹⁶ In l. 3, § 1, ff., *Ne quid in loco publico* [=Dig., 43, 8, 3, § 1].

¹⁷ In l. 13, ff., *Communia praediorum* [=Dig., 8, 4, 13], and l. 13, § ult., ff., *De iniuriis* [=Dig., 47, 10, 13, § 7].

greatest part of it had not been occupied or possessed, perhaps, indeed, no part of it at all, if you have in mind the high sea. Since this is so, as I shall presently show, they are entirely correct in stating that the sea is common to all men, that it lies open by nature to all, that by natural law fishing is free, and other statements to the same effect. For as I have shown above, that rule of nature, namely, "to yield to the occupant," holds in a sea which has never been occupied, as well as in a sea once occupied but the possession of which has later been given up. It makes no difference, according to my interpretation, whether the sea is called *commune* and κοινὸν πάντων ἀνθρώπων, or whether it has been put *in medio* for the one who occupies it first. This will be plain after we shall have investigated what meaning our authorities have been accustomed to give to the word *mare*.

The same thing is true as regards the ocean. Why the ocean is called especially the "sea."

407 And indeed it does not seem there can be doubt that the term *mare*, pertains to the ocean, or at least to the ocean, if the idea be taken away which is added to it by the Greek and Latin writers, who when they say *mare* came to think of something vast and infinite. Let us hear Catullus alone, not as a teacher of levity, but of Latin history. In his epigram to Formianus concerning Mentula¹⁸ he says:

Mentula habet instar triginta jugera prati,
 Quadraginta arvi, caetera sunt maria.
 Quir non divitiis Croesum superare potis sit,
 Uno qui saltu tot moda possideat?
 Prata, arva, ingentis silvas, saltusque, paludesque
 Usque ad Hyperboreos et mare ad Oceanum.

(Mentula has something like thirty acres of grazing land, forty of ploughland: the rest is *salt water* (*maria*). How can he fail to surpass Croesus in wealth, who occupies so many good things in one estate, pasture, arable, vast woods and cattle ranges and lakes as far as the Hyperboreans and the *Great Sea* (*mare ad Oceanum*).)

And in this sense the word πόντος is found in Callimachus in a verse which Isaac Voss¹⁹ has noted down with reference to those lines of Catullus.

Clearly since the ocean immensely outranks all inner seas because of its great size, since the ocean flows round nearly all the lands of all rulers, and since, in a word, it is the sea *par excellence*,

¹⁸ [Poem 115, II. 1-6. The translation is CORNISH's (Loeb Classical Library), p. 181. CORNISH evidently interprets *maria* in a different sense from BYNKERSHOEK].

¹⁹ P. 342. [Voss says that *maria* here is used for infinite resources or in fact anything great, as in a passage from Callimachus which he quotes.]

there is no reason why we should exclude it from the ideas of the ancient juriconsults. Moreover that ocean, as we have already learned, was never occupied either by the Romans or by anyone else. The Romans did hold one tiny portion of the vast expanse with their British fleet, but I do not know whether any mention of that fleet is ever made after the time of the Emperor Trajan, perhaps not even during his reign. To be sure, Priscus Javolenus,²⁰ who lived and wrote in that period, mentions each chief pilot of the British fleet, but it is uncertain whether he is telling what happened in his own time or what he heard from his elders.

And so I should not dare affirm in regard to the British strait that a Roman fleet occupied it during the time of our juriconsults, most of whom certainly lived after Trajan's time. And suppose it did occupy the strait, nevertheless in general the ocean will rightly be called *communis*, its most important part, indeed nearly every part of it, not being under possession. Therefore it was *communis*, and is yet, and will be hereafter, until there is someone who will be able to occupy it with his ships, and just as no one expects that as regards the entire sea, just so there is no reason why that should not be expected as regards parts of the sea. 408

Why also in the time of our juriconsults sovereignty over the Mediterranean Sea seems not to be true. A difficulty from the Code is advanced and solved.

But if we believe that our authorities, when they speak of the sea, mean the Mediterranean, because it was nearest to them, we shall be continually suspicious that already at that time they had given up the careful guard of that sea which the Romans kept in early times with their four fleets. And, to speak truly, I do not remember that I found anything concerning their perpetual fleets in the Mediterranean Sea in the writers on Roman history contemporary with our juriconsults and with Marcian and Ulpian, who have so often recorded for us that happy phrase concerning the common ownership of the sea; nor do I remember even that there was a tradition concerning that time among later writers.

I do not bring grain-carrying fleets into this question, since indeed they sailed for quite another purpose than for the possession of the sea. Nevertheless during the reign of Valens there is a mention²¹ of a Seleucian fleet "to help clear the Orontes," but does that mean to clear it of rubbish or of sea brigands? I am more inclined to the latter view.

²⁰ In l. 46, ff., *Ad Senatusconsultum Trebellianum* [=Dig., 36, 1, 48 (46)].

²¹ In l. un., C., *De classicis* [=Code, 11, 13 (12), 1, which is a rescript from the Emperors VALETINIAN and VALENS to AUXONIUS].

On the contrary, our argument is really concerning sea-going fleets, not river fleets; for our authorities have not said the rivers were common to all, but that the sea was. As regards this matter, since there is possession in fact, it must be proved that that fleet near Seleucia not only lay out on guard during Valens' time, but also in the time of the emperors, in whose age our authorities wrote their legal opinions. Therefore, even though it were a maritime fleet, a single guard of one sea would not prevent the sea in its largest sense from being called common to all.

409 Nominally indeed the sovereignty of the sea was boasted of for some time by the Romans after their possession of the sea was lost, but our jurisconsults, when they speak of this do not stand forth as flatterers but as priests of justice, for they were well aware that there was no possession of the ocean, and that the possession of even the Mediterranean Sea had been already lost in their time.

From our authorities it is shown that a private right in the sea can belong to anyone. Even Grotius recognized this, but the acknowledgment soon involved him in various difficulties.

Following their example we—also well informed—say that nowadays no sea is possessed by anyone and that today the sea is free and common to all.

Thus the reason is sufficiently established for what the Roman jurisconsults say about the common ownership of the sea, and at the same time it is clear that it is wrong to accept their statement as if the sea could not become entirely a private possession. For plainly it can be defended by a variety of arguments that they understood it otherwise. Concerning the maritime sovereignty of the Romans, whether public or private, Selden²² has brought together many things even out of our books which I do not repeat. Nor is it necessary to cavil about this matter any further, since that is a very well rounded statement which Paulus²³ makes. "Clearly," says he, "if a private right in the sea belongs to anyone, the interdict *uti possidetis* is competent to protect him, if he should be prevented from exercising his right, since this *res* now pertains to a private case, not to a public one!"

This passage even extorted from Grotius a confession concerning the proprietary ownership of the sea, as to how it could be occupied and how it had been occupied. A most just conclusion, if he did not except some small portions of the sea, which he decides are at least capable of occupation without a vote of the people, and if he

²² *Mare clausum*, bk. 1, ch. 24 and 25.

²³ In l. 14, ff., *De iniuriis* [= *Dig.*, 47, 10, 14].

did not indifferently add that nevertheless public use in an occupied sea must not be hindered.

Neither statement, although both are *ipse dixit's*, meets with my approval. Why the former statement does not, I have explained above, and to what extent the latter statement is true or seems to be true, I shall explain forthwith. Meanwhile it is evident that a private right in the sea can be acquired, and therefore that the sea is not to be called *commune*, as if it were something over which sovereignty has not been acquired.

How occupation of the sea by a nation and by an individual proceeds.

Moreover, sovereignty is acquired in those ways which we have pointed out, and it is acquired either by a nation or by an individual, so that if a sea is occupied by a nation it belongs to the state, if by an individual, to a private person. Wherefore if a private person, for example, should occupy a part of the sea with his dwelling, he will be owner of it ²⁴ no less than Lucullus obtained sovereignty of that sea which he brought to his villa near Naples, according to the well-known story. If a nation should occupy the sea, it will be public.²⁵ In Chapters II and III we have treated both these kinds of occupations. 410

The cases of the shores and the sea are alike. Shores are not called "commune" except when unoccupied. Nevertheless they can be and often have been brought under sovereignty.

Therefore it will be clear that this doctrine must be settled by the example of the shores which are in the same case as the sea, as we have said, and with which many citations from the Digest agree.²⁶ Therefore the shores are common, or—which is the same thing—public, according to the law of nations; but according to civil law they are not public and are not part of the patrimony of the people, as Neratius ²⁷ shows. But Neratius ²⁸ observes that this does not prevent the shores from being subjected to sovereignty. These are his words:

The condition of the shores is not different from that of fishes and wild animals, which as soon as they have been taken become, without doubt, the personal property of him into whose power they have come.

²⁴ L. pen., ff., *De divisione rerum* [=Dig., 1, 8, 10, which is an excerpt from POMPONIUS].

²⁵ *Loc. cit.*

²⁶ L. 2, § 1, ff., *De divisione rerum* [=Dig., 1, 8, 2, § 1, which is an excerpt from MARCIAN], and elsewhere.

²⁷ In l. 14, pr., ff., *De acquirendo rerum dominio* [=Dig., 41, 1, 14, pr.].

²⁸ *Loc. cit.*

Wherefore if I should occupy a stretch of shore, it will be mine, although in other respects, by a rule of law, what I build on the shore may not be mine, and nevertheless the clear sense and authority of law ²⁹ give me a warrant to both. But just as an individual by occupation subjects a shore to his ownership, so there is no reason why a nation may not do likewise on the same principle.

What our authorities have said about these shores is adduced and explained.

An example may be seen in the Roman people who—it seems to me—occupied those shores to which they sent colonists to guard the coasts of their realm, for which Siculus Flaccus is authority. For if these shores, and any others besides, had been occupied and possessed in any other way, I should not hesitate to call them the shores over which the Roman people held sway, and which moreover Celsus ³⁰ clearly called the “property of the Roman people.” This is the same Celsus on confuting whose opinions those who differ with him have spent so much labor.

411 But that ancient writers have wisely called shores common seems to me to have been done for no other reason than that they had not for the most part been occupied “for the law-givers have occasionally transgressed in that respect,” as our Paulus says somewhere, quoting from Theophrastus. Nor shall I say that those must not be judged to have been neglectful who handed down, concerning the dominion and sovereignty of the shores, the opinions which we have mentioned and will yet mention.

But because I have said that many shores were common to all and were not occupied by the Romans, that will offend no one who will have turned his attention to the size of the Roman Empire, and who will have recognized that these borders of the sea were almost sterile and not worth occupation. What the expression “to plow the shore” may mean, everybody knows. But if this observation concerning the common ownership of the shores be applied to the sea, it will confirm what I was just saying, that the sea is common and subject to him to whom it was not subject at the time of those who have accumulated this information for us. Nevertheless that no part of it had been subdued even at that time, and was the public property of the Roman people, will not be denied by him who by no means unwillingly concedes that maritime belts are always held in possession, and because of that fact are held in sovereignty.

²⁹ In the aforementioned l. 14, pr. [= *Dig.*, 41, 1, 14, pr.], and l. 6, § 1, ff., *De divisione rerum* [= *Dig.*, 1, 8, 6, § 1, which is an excerpt from MARCIAN].

³⁰ In l. 3, pr., ff., *Ne quid in loco publico* [= *Dig.*, 43, 8, 3, pr.].

I speak of the land which is itself subject, since it is sufficiently certain that not a jot of private right can pass to anyone by virtue of having the shores, which are themselves common, that is, have not been brought under authority.

Therefore if any sea or shore had been occupied by the Roman people, it appears that this belongs to that people, and this applies to rivers just as it does to public highways, as Ulpian says.³¹

How and what the authorities have handed down concerning non-impeding the use of the sea, as explained in various passages from the Digest. Grotius and some of the commentators seem to have misunderstood these passages.

Here and there scattered through the Pandects are the following titles which apply to this very matter:

Ne quid in loco publico vel itinere fiat (Let nothing unlawful be done in a public place or highway)³²;

De via publica, et si quid in ea factum esse dicatur? (Concerning the public highway and what may lawfully be done thereon)³³;

De fluminibus, ne quid in flumine publico, ripave eius fiat, quo peius navigetur (Concerning rivers, how nothing may be done in a public river or on its bank by which navigation is impaired)³⁴;

and a few titles following.

And this precaution must be maintained constantly in those things which are in the public use of the state, in order that one person may not harm another. "Although," says Pomponius,³⁵ "what we shall have constructed on the public shore or in the sea may become our own, nevertheless a decree of a praetor ought to be obtained giving permission for such act; nay, more, one must be forcibly prevented, if he would do this to the annoyance of other people."

I wonder that it occurred to Bachovius³⁶ that not "of a praetor" (*praetoris*) but "of a prince" (*principis*) had to be read, and I wonder too at those who have been found to approve it. But we are not going to argue that here. This fact is clearly brought out, that, on a shore or sea which belongs to the Roman people, it is the business of the praetor to learn if anything can be legally built without regard to public inconvenience. And indeed Pomponius openly speaks concerning public property, not common property, as Grotius³⁷ thought.

³¹ In l. 24, pr., ff., *De damno infecto* [= *Dig.*, 39, 2, 24, pr.].

³² [= *Dig.*, 43, 8.].

³³ [= *Dig.*, 43, 10.].

³⁴ [= *Dig.*, 43, 12.].

³⁵ In l. 50, ff., *De adquirendo rerum dominio* [= *Dig.*, 41, 1, 50].

³⁶ On the first titles of the Digest, on l. 5, ff., *De divisione rerum* [= *Dig.*, 1, 8, 5].

³⁷ *Mare liberum*, ch. 13.

In public matters care must be taken that nothing inconveniences individuals, but it is different if public use hinders; and if the use of the shore or the sea shall be considerably impeded, it must even be prevented by force.³⁸

Further, he who obstructs public use of public property, he who forbids me to fish or to put a drag net in the sea, which is the property of my own state, "according both to Pomponius and others besides is in the same case as he who is not allowed to bathe in a public bath, or to sit in the public theater, or to move about, sit, or dwell in any other place; or if anyone should not allow me to use my property; for he can be sued for damages," as Ulpian³⁹ says. Following these very clearly with his own testimony he⁴⁰ says:

If anyone shall be prohibited from fishing in or navigating upon the sea, the interdiction will not hold, just as he may not be prevented from playing on a public field, or bathing in a public bath, or sitting in the theater. But in all these cases he must bring an action for damages.

413

Indeed this action will not be denied to him who shall have been prohibited by me from fishing in front of my house or before my country seat,⁴¹ for since he is making use of public property, Ulpian correctly says that "it is an illegal usurpation of authority" to keep him from the sea shore, the public property of the state.

Nevertheless these things do not prevent those who rule the state from letting out that sea, which they control, by right of sovereignty, and do not obviate the obligation of giving an interdict to the lessee, seeing that "force must not be used against him to prevent him from enjoying his tenancy," as Ulpian⁴² says in giving his own opinion and that of the ancient writers.

From them we know that what our authorities have stated concerning the non-impeding public use has no application either to states or to individuals for whom the right of ownership of an occupied sea or shore is appropriate, but applies only to those who use properly a public thing as if it were public property and do not abuse it as if it were a private possession. Therefore as I am competent to prohibit other persons from fishing in a lake which belongs to me,⁴³ I am also competent to enforce the same prohibition on a sea over which I have a proprietary right, and if anyone does not

³⁸ The aforementioned l. 50 [= *Dig.*, 41, 1, 50]; l. 3, § 1 [= *Dig.*, 43, 8, 3, § 1, which is an excerpt from CELSUS], l. 4, ff., *Ne quid in loco publico* [= *Dig.*, 43, 8, 4, which is an excerpt from SCAEVOLA].

³⁹ In l. 13, § ult., ff., *De iniuriis* [= *Dig.*, 47, 10, 13, § 7].

⁴⁰ In l. 2, § 9, ff., *Ne quid in loco publico* [= *Dig.*, 43, 8, 2, § 9].

⁴¹ The aforementioned l. 13, § ult., ff., *De iniuriis* [= *Dig.*, 47, 10, 13, § 7].

⁴² *Loc. cit.*

⁴³ The aforementioned l. 13, at end.

allow me to exercise my right, behold the interdict *uti possidetis* is all ready for him, which, as it has been arranged for cases of a private nature, so here will take care also of my case.⁴⁴

It is not lawful for me to build out a jetty into a sea which belongs to the Roman people, if "in any possible way this may work injury to anyone"⁴⁵; nor is it lawful to do anything "in the sea, or on the shore, by which a harbor, a roadstead, or a channel for shipping be rendered less useful."⁴⁶ In a private sea this will be allowed, of course, and even to shut it in "with piers of rocks laid in their depths," so that "the fishes note the narrowing of the waters."⁴⁷ As anyone shall have decided about his own property, let the law thus stand, and therefore if it shall have pleased me to decide in this way or in that about my own property, I decide without regard to its injuring anyone else, and—as I have said—the Roman praetor with his interdicts stands by my side.

Even in Roman law possession of the sea and the shores gives absolute sovereignty, and defends it. An illustration from the Basilica. A passage from the Digest is corrupt. This is restored, applied to the present case and compared with another passage from the Digest.

But that I may leave off further discussion, let us dismiss the 414 question of Roman law concerning the sovereignty of the sea with the conclusion which we touched upon in Chapter I, namely, that it is true by that law also that possession of the shores, and thus of the sea, gives and defends sovereignty in a particular degree; and therefore where possession is not present, there is no right of sovereignty, in accordance with the arguments which we have thus far brought forward. The example of a house built on the shore and afterwards destroyed illustrates this.⁴⁸ And not otherwise in the case of a building,⁴⁹ namely, a place which we lose possession of, when the building is destroyed, returns to its primitive condition, and therefore becomes public property, as if it had never been built upon. Εἰ καταπέσῃ τὸ κτισθὲν, πάλιν κοινὸς ὁ αἰγιαλὸς γίνεται (If what has been built has fallen down, the shore again becomes public property), rightly say the

⁴⁴ L. 14, ff., *De iniuriis* [=Dig., 47, 10, 14, which is an excerpt from PAULUS].

⁴⁵ L. 2, § 8, ff., *Ne quid in loco publico* [=Dig., 43, 8, 2, § 8, which is an excerpt from ULPIAN].

⁴⁶ L. 1, § 17, ff., *De fluminibus* [=Dig., 43, 12, 1, § 17, an excerpt from ULPIAN].

⁴⁷ [Cf. HORACE, *Odes*, bk. III, 1, ll. 33–34: "Contracta pisces aequora sentiunt | iactis in altum molibus." The translation is BENNETT'S (Loeb Classical Library), p. 171.]

⁴⁸ L. 5, § 1 [=Dig., 1, 8, 5, § 1, which is an excerpt from GAIUS], and l. 6, pr., ff., *De divisione rerum* [=Dig., 1, 8, 6, pr., which is an excerpt from MARCIAN].

⁴⁹ L. 14, § 1, ff., *De acquirendo rerum dominio* [=Dig., 41, 1, 14, § 1, which is an excerpt from NERATIUS].

Basilica,⁵⁰ as they confirm the word *publicum* by using the word *κοινὸν*⁵¹; for in the passage quoted *publicum* is rendered by this word, not by *δημόσιον* or *πούβλικον*.

Papinian⁵² also, to mention all the authorities, has taught us after this fashion:

Praescriptio longae possessionis ad obtinenda loca juris gentium publica concedi non solet, quod ita procedit: si quis aedificio funditus diruto, quod in littore posuerat, aut dereliquerat aedificium, alterius postea eodem loco exstructo occupantis datam exceptionem opponat.

(Prescription based on long possession is not usually allowed in the acquisition of places public by the law of nations, because the procedure is this: Anyone, after a building which he had built on the shore had been utterly destroyed, or he had abandoned the building, may oppose the given limitation, if another occupant should build on the same spot.)

This is the usual reading, but manifestly the text has been somewhat disarranged, and it would probably be restored correctly if one should read and punctuate thus:

si quis aedificio funditus diruto, quod in littore posuerat ac dereliquerat, aedificio alterius postea eodem loco exstructo occupanti datam exceptionem opponat.

(Anyone, after a building, which he had built on the shore and then abandoned, had been utterly destroyed, may oppose the limitation given to an occupant in a building built on the same place later by someone else.)

Cujas in commenting on the passage also reads *occupanti* and *aedificio*, while the editions previous to Cujas and even that of Robert Stephanus (Paris, 1537) retained both words; but he and they do not seem to have sufficiently understood the matter. Papinian also takes this up, proving that places which are *communia*, or—what
415 is saying the same thing—places which by the law of nations are *publica*, can not be acquired by prescription, inasmuch as, if we interpret him rightly, it is wholly unnecessary. For, as soon as anyone has occupied such places, he forthwith makes them his own by that same law of nations made over into civil law. He explains this by two examples. First, as we have shown, he defends the person who has built a building on the shore in the very place where another had built something which had been destroyed, granting “the limitation given to an occupant,” that is to say, a defense which by right of occupation is given for guarding a possessor in sovereignty acquired by the law of nations. The second example is this: “Anyone, because he alone had fished for many years in a branch of a public river, may prohibit anyone else from enjoying the same right.”

⁵⁰ [That is, the Greek code of law in 60 books, consisting of large selections from the Digest, Code and Novels, published by Leo the Philosopher between 886 and 892,] bk. I, tit. 1.

⁵¹ [In the translation of] the aforementioned § 1 [= *Dig.*, 41, 1, 14, § 1].

⁵² In l. 45, ff., *De usurpationibus et usucapionibus* [= *Dig.*, 41, 3, 45].

From the first proposition, it appears that he is considering him who is not engaged in fishing and who wishes—but with no right—another person removed. The possession of the former is lost, his right is lost, and the fishing is free to all. But on the other hand a passage in the Digest,⁵³ which is especially wont to be connected with the passage quoted above,⁵⁴ deals with the person who really is still engaged in fishing, and who prohibits another person from enjoying that right, and legally, because the condition of the one really in possession is the better. The ancient commentators on the law take this position, as do Duaren, Cujas, Doneau, and Grotius among the more recent commentators.

Epilogue on the small compendium of so large a subject.

These are the things which it has seemed best to suggest rather than to elaborate on the sovereignty of the sea. The unique opinion which I hold, the wealth of argument, and the great multitude of opinions which learned men have enunciated on this matter, seemed to demand a larger volume than this, but with that ambition laid aside, it may suffice to have stated the case and mayhap to have settled the matter.

⁵³ In l. 7, ff., *De diversis temporalibus praescriptionibus* [=Dig., 44, 3, 7, which is an excerpt from MARCIAN].

⁵⁴ The aforementioned l. 45 [=Dig., 41, 3, 45].

DE DOMINIO MARIS
DISSERTATIO

BY CORNELIUS VAN BYNKERSHOEK
Jurisconsult and Presiding Judge

THE PHOTOGRAPHIC REPRODUCTION
OF THE SECOND EDITION
(1744)

The *Minor Works* mentioned on the next page consist of seven treatises, of which only the *De dominio maris* is reproduced here. This treatise follows immediately after the next page and consists of pages 351–424 of the original. The gap in pagination between pages 108 and 351 is explained by the retention of the original pagination for the photographic reproduction.

CORNELII VAN BYNKERSHOEK,
JURISCONSULTI ET PRAESIDIS,
OPERA MINORA,
OLIM SEPARATIM, NUNC CONJUNCTIM
EDITA.

Recensuit & nonnulla addidit Auctor.

*Indicem Operum exhibet Pagina, quae generalem Prae-
fationem excipit.*

EDITIO SECUNDA.



LUGDUNI BATAVORUM,
Apud JOANNEM VAN KERCKHEM, 1744.

Cum Privilegio Ordinum Hollandiae & West-Frisiae

CORNELII VAN BYNKERSHOEK,

Jurisconsulti & Praefidis,

DE

DOMINIO MARIS
DISSERTATIO.

L E C T O R E M.



Argumentum adgredior, quod non unius belli causa fuit, & de quo etiam ab Viris eruditis vario Marte certatum est. Et tamen de dominio maris magis, quam terrae quaerere supervacuum esset, si non multorum inanes tricae multum ei tenebrarum offudissent. Quare nunquam magis sum miratus, quam Viros in Jurisprudencia & re literaria primos proximo, quod abiit, saeculo potuisse hic tam serio scindi in contraria studia, & ingenteis adeo turbas dare de re, cujus definitio non videtur esse in difficili: utique si rem putes, non auctoritates, forte semicrudas alicujus Poëtae, aut si quis ei similis est. Sed scin', cur tam varie? aliquos amor Patriae, aliquos adblandiens commerciorum libertas, aliquos adulatio, aliquos tandem indicta publice praemia seduxere. Nos citra spem metumque, citra affectum agere decrevimus, tuituri maris cum libertatem, tum dominium; ita quippe censeo: mare in dominium redigi posse, ut quod maxime, neque tamen hodie ullum mare imperio alicujus Principis teneri, nisi qua forte in illud terra dominetur. Video obstantes catervas: at per eas non difficile erit nos explicare, ubi de origine cujuscunque domini constiterit. ab ea rem repetemus; ita machinae, quas subvertere oporteret, mole ruent sua. Si animus esset cuncta persequi, enasceretur mihi non Dissertatio, sed justum volumen: liceat igitur, quod res est, breviter & quam fieri potest simplicissime dicere, moribusque Gentium probare, vel, si contradicant, damnare; liceat aliorum sententias nec prolixè narrare, nec nisi parce & oblique refutare. De dignitate ejus argumenti frustra sim, si quid amplius praefarer. Placuit Interpretibus id tractari ad l. αἰτίας IX. ff. de Lege Rhod. de jact. loco non suo, ut scire licet ex iis, quae in libello ad d. l. IX. modo diximus in hanc rem. Sed nihil vetat morem genere huic παρέρω, quum nostra, & forte tua, Lector, nihil referat, hic an alibi dicantur, quae de Dominio Maris dicere constituimus. Vale.

COR-

CORNELII VAN BYNKERSHOEK,

Jurisconsulti & Praefidis,

D E

DOMINIO MARIS

DISSERTATIO.

C A P U T I.

De origine Domini.



Uoniam ante dominiorum distinctionem, ex qua duntaxat singulorum in omnia potestas, naturae regula fuit, & adhuc est, nihil moveri nisi a magis valido, *ex naturali possessione dominium rerum coepisse* recte Nerva observat in *l. i. §. i. ff. de acquir. vel amitt. possess.* ex eo enim, constabat, in pari causa conditionem possidentis esse meliorem; ideoque rem detentam adimi non posse, nisi ab eo, qui in ea plus juris habebat, hoc est, a nemine, omnium quippe hac in re aequalis conditio fuit, cum proprie telluris herum natura nec illum, nec me, nec quemquam statuit. *Dominium d. §.* appellat jus praecipuum habendi, a quo quis, nisi injuria, depelli nequit. Utque id jus *coepit* ex naturali possessione, ita non aliter duravit quam re possessa. Dominium & possessio ambulabant passu pari, neque aliud praestabat antiqua illa apprehensio quam jus detinendi,

TOM. IV.

Y y

quod

quod a jure separatim habendi nihil omnino differebat. Id autem jus quum ultra detentionem non extenderetur, ea remissa res in antiquam causam recidebat, quod & Nerva & Paulus videntur animadvertisse in *d. §. 1.* non obscure enim ibi videas occupationem veterem secerni a nova, ita ut hodie res nullius occupatae in occupantis dominium cedant, uti plene fiant ipsius, olim vero per apprehensionem naturalem non aliter apprehendentium censerentur praecipuae, quam si tenerentur corporaliter, & quamdiu illa detentio durabat. Atque hujus juris vestigium remansit in iis, quae usu Civitatis in dominium redacta non sunt: si causam in littore exstruxero, solidi dominus efficior, sed diruta casa, & remissa sic possessione, quasi jure postliminii revertitur locus in pristinam causam *l. 5. §. 1. & l. 6. pr. ff. de rer. divis. l. 14. §. 1. ff. de acquir. rer. domin.* Ut autem alicujus jus etiam ultra extenderetur, ex apprehensione fieri non potuit, quia aequae ad omnes eadem res pro indiviso pertinebat; ad illud igitur conventio fuit necessaria, qua quis juri, quod naturaliter habebat, renunciaret, quoque alioquin protinus occupaturo, cui alius post apprehensionem non continuo incumberebat. Cujusmodi pactum aliquando inivisse universum genus humanum scio qui dicant; at illud cum perquam sit absurdum, nihil putem superesse, quam ut dominium adscribamus Juri Civili, civium enim est conventio, ut quisque sua habeat tuta separatim, etiam citra possessionem praecise naturalem.

Perpicue illud quoque comprobatur D. Augustini disputatio in *Cap. I. Caus. XXXIII. Quaest. VII.* & praesertim in *Cap. I. Distinct. VIII.* de quo ad alia detorquendo tantum laboratum est, in partes laboris venerunt Goedeus in *Comment. ad l. 42. ff. de V. S.* & Lyclama *Opin. Lib. II.*

Eclog.

Eclog. 13. sed irrito conatu. Recte Augustinus dominia rerum jure humano, & quidem Civili, subsistere, & hoc sublato illa quoque tolli disputavit: etenim verissimum est, dominia, Gentium occupatione quaesita, non nisi legibus cujusque Gentis rata esse, in tantum scilicet, ut res, etiam non detentae, solo animo retineri possint. Quapropter si res mea extra Civitatem meam reperiatur, me absente & ei non incumbente, cedit rursus primum occupanti, ceu res nullius, vel potius ceu res communis &, ut inquit ille, *in medio posita*. Neque aliter Auctores Juris Romani sensisse constat ex Pomponio in *l. 5. §. 2. ff. de capt. & postlim. revers.* & Proculo in *l. 7. pr. eod.* dum ad neminem rerum suarum dominium extra Civitatem suam pertinere liquido satis pronunciant; non alia ratione, quam quod communis Civitatis sponsio Gentibus exteris non praejudicet, sed teneat duntaxat illius Civitatis membra, juri suo dum renunciarunt. Ad externos itaque, ad quos nihil Civitatis nostrae jussa, ubi bona nostra pervenerint, dominorum esse desinunt *d. l. 5. §. 2. & d. l. i. Dist. VIII.* nisi, quod recte excipit *d. §. 2.* inter eos Populos amicitia sit contracta: per eam enim alterius Civitatis conventio alteri rata habetur, quum, nisi id fiat, nullo modo amicitia inter homines rerum suarum amantes possit consistere.

Ea etiam Jurisprudencia Turcos uti significat *§. 2. & §. 5. Privilegii*, quod Achmet anno MDCXII. Belgis foederatis dedit; ait enim, si quis in ditiones suas adpellat, cujus populus neque foedus neque amicitiam secum habeat, ejus bona publicari, ipsumque in servitutem redigi; a quo Belgae, etsi in peregrina nave adpellant, virtute ejus privilegii eximuntur *d. §. 5.* nituntur haec jure, quod diximus. Peccat tamen in eo haec Jurisprudencia Turcorum,

quod liberos homines ea ratione dominio suo addicat, nam Pomponium, qui id ipsum videtur velle in *d. l. 5. §. 2. in fin.* intelligimus de homine libero, ob justam causam capto. Quin & ita fortasse intelligere posses Turcorum Imperatorem, & *d. §. 5.* secundum principia religionis Turcicae interpretari de Christianis, hoc est, ipso jure hostibus. Sin contra esset, mihi equidem cum illius, tum Pomponii ratio non videtur constare; neque enim, ut rerum, ita hominum, Jure Naturae Gentiumve commune dominium fuit: & tamen illud, quod diximus, justribuendum est unice communioni, a qua ictis de amicitia foederibus recessum non fuit.

Foedera autem accipimus, praeunte Pomponio, quibus vel amicitia vel hospitium contrahitur: aliud, si tantum placuerit, ut bello abstineatur, tunc enim de reliquis nihil pactum; quo casu supererit locus Galli sententiae apud Festum in *Voc. Postliminium*, cum ait, etiam *cum Populis liberis & confœderatis postliminium esse*. Quum vero hujusmodi foedera, extra bellum, inter Gentes esse soleant, jam apparet, quod non putem hucusque apparuisse, quo sensu ex Jure Gentium dicatur esse dominiorum distinctio in *l. 5. ff. de Just. & Jur.* eo quippe jure pactis foederibusque agnitum est & probatum illud jus, quod dederat antiqua occupatio, seu potius illud jus, quod amissa possessione amittebatur, extensum est ad eas regulas, quibus in Civitate reguntur rerum dominia.

Secundum haec interpretamur M. Tullii Ciceronis locum *Lib. I. de Offic. Cap. 21.* a Grammaticis, ni fallor, male habitum. Ita legitur vulgo: *Sunt autem privata nulla natura; sed aut veteri occupatione, ut qui quondam in vacula venerunt; aut victoria, ut qui bello potiti sunt; aut lege, pactione, conditione, sorte. ex quo fit;*

fit, ut ager *Arpinas Arpinatum* dicatur: *Tusculanus Tusculanorum*. Opinor mendum esse in finalibus, restituendum, si ita legas & interpungas: *aut lege, pactione conditione. ex quo fit, ut ager forte Arpinas Arpinatum dicatur*, & reliqua. Hoc vult, rerum dominia quaeri vel occupatione vel conventione. Occupatione bifariam; aut rerum nullius, per apprehensionem vacuae possessionis, aut alicujus, jure videlicet belli. Conventione rursus bifariam; aut publica, quum ex lege, aut privata, quum ex contractus causa dominium transfertur, hoc est, *pactione conditione*, si, ut oportet, conjunctim accipiatur. Legendum videri poterat *condictione*, siquidem *condictum* pro *convento* & *conventione* est, etiam Caecilio Jcto apud Gellium *Lib. XX. Cap. 1.* sed nec male pro eo & *conditione* usurpatur. Saepius quoque in libris antiquis haec verba commutata reperiuntur, vel scripturae errore, vel quod utriusque par sit significatio, utique par, cum *pacti* verbum additur, quemadmodum & Cujacius observat ad Pauli *Sentent. Lib. I. Tit. 1. §. 1.* Atque ita apud Tullium *pactio conditio* sunt duo ejusdem notationis verba, quomodo apud nostros hac ipsa in re *pactum conventum, pactum conventio*. Qui in Cicerone haec separatim legunt, interpretes sunt non interpretes; neque meliores, qui voculam *forte*, eamque eo loco servant. Hic enim quaerendi domini modus, utcunque eum explices, vel a *lege*, si qui publice fortiantur, vel a *pactione conditione*, si privatim, distingui nequit, cum utique, si forte dominia dividantur, semper oporteat praecedere sponsonem vel privatam vel publicam Civitatis. Sed jam restitui voculam, quae videbatur legi mendosa, nec suo loco. *Ager forte Arpinas* recte dicitur; in hunc sensum *forte* exemplum notat, ut in *l. 9. §. 7. ff. de usufr.*

& passim alibi. Nullius oppido pretii sunt, quae hic legunt & adferunt Lambinus & Turnebus, nullius item, quae prolixè ad hunc locum effudit *Lyclama Opinion. Jur. Civ. Lib. II. Ecl. 13.*

In explicanda origine dominii alii aliter instituerunt; sed nolim in eo argumento heic vagari. Communione antiquam sunt etiam, qui negant fuisse, non gnari scilicet, per communionem intelligi statum, quo res nondum iverant in proprietates singulorum, at omnibus ad omnia aequale jus erat. Recte illi, si, quod facere videntur, communionem negent, qualem Plato in *Rempubicam* suam induxit; de ea vero nemo senserit. Satis hoc claret ex iis, quae Hugo Grotius exsequutus est *Cap. V. Maris liberi, & de Jure B. & P. Lib. II. Cap. 2.*

Hoc omnino probare non possum, quod de secessu ab illa communione, & modis quaerendi dominii utroque loco idem disputat. Utilitas rerum, quibus se suosque exhiberet quisque, occupationi causam dedit. utilitas, inquam, non tamen necessitas. Illam autem metiebantur primi mortales ex usu rerum & abusu, & prout quaeque res majorem minorumve usum sui praebebat, eo magis minusve appetebatur. Atque adeo si ea, quae usum omnibus praestare poterant, magis tamen essent utilia, si haberentur separatim, non potest non inde constare de animo cujusque ad ea sibi applicanda. Docent hoc τὰ πρῶτα κατὰ φύσιν, docet, quam Graeci proprio vocabulo appellant, mortalium πλεονεξία, quae semper fuit, & erit, donec homines, maxima. Haec vero tum necessaria, tum utilia non aliter sibi applicabant, quam naturali occupatione, id est, rerum, quarum satagebant, apprehensione corporali, nam animo solo vel universum orbem facile unus deglutiverit. Non difficulter id omnes dabunt, hoc

hoc nemo, jus corpore & animo quaesitum in re occupata, non nisi eadem ratione, corpore puta & animo, feruari: & tamen illud verum est de primaeva occupatione, qua ventum est in vacua. Videor id jam satis probasse ex naturali jure omnium ad omnia; ne addam, ex remissa possessione tunc non potuisse praesumi nisi animum habendi rem pro derelicta secundum Jurisprudentiam illorum temporum naturalem; possessionem animi lex tuetur Civilis, quae tunc nulla erat. Utque adeo Grotius, *d. Cap. V. Mar. lib.* necessitatem *perpetuae*, quam vocat, *occupationis* male videatur ad ea duntaxat referre, quae sua natura possessioni renituntur, ut sunt ferae bestiae, male scilicet, si haec ad veterem occupationem, non autem ad Jus Civile solum pertinere credamus.

Si non subsistant, quae *hoc Capite* disputavi de origine dominii ex jure Naturae Gentiumque, etiam subsistere nequeunt, ex iis quae collegi effecique toto hoc libello. Ultra possessionem dominium non durare in rebus occupatis Naturae, ut puto, regula est, jure Gentium confirmata, & ex utroque jure à Jctis Romanis descripta. Sed postquam haec edideram anno 1703. Christianus Thomasius, magnum inter Germanos & omnes eruditos nomen, modestè se iis opposuit *Notis ad Ulricum Huberum de jure Civitatis Lib. II. Sect. IV. C. 2. n. 43.* Auctoritas ejus Viri non pateretur, ut, quae ipse objecit, iterata nunc editione silentio transmitterem, nisi praevenisset industria Viri Consultissimi Theodori Graver, hic enim *dissertatione de Mari natura libero, pactis clauso, Sect. I. C. 3. n. 5. & seqq.* adeo strenue & feliciter causam meam egit, & ad singula Thomassii respondit, ut, si quid adderem, videri possim actum agere & bonas horas perdere. Ne tamen litem, quae mea est, plane suam fecisse videatur, non pos-

possum praetermittere, quin uno verbo animadvertam, Thomesium, tantum non invitum, delabi ad Jurisprudentiam naturalem, quam ipse extuli, remissa nempe possessione remitti dominium, si merum jus Gentium putemus. Agnoscit utique eam Jurisprudentiam in rebus mobilibus, agnoscit & in rebus immobilibus, in occupatione forte insultae, incultae, si post deferatur corpore, etiam non deferatur animo. Mox ipse palam: *Res immobiles, quae sunt nullius, occupatae esse censentur, si coeptae sunt custodiri, aut si coeperim solo uti ad id, ad quod destinatus est natura, & usus durat. V. G. si aedificaverim in solo, si solum vallo & fossa vel sepibus circumdederim. Conservatur, inquit, possessio, quam diu continuatur custodia, etiamsi non incumbam possessioni, sed abeam V. G. si ager constitus sit, & fructus a me sotos ferat, si ager circumseptus sit, si aedes exstructae maneant, si clavem ad aedas habeam, si alios arceam ab usu rei &c.* Haec ille & recte, nam omnibus his, quos recenset, modis possessio, ex apprehensione coepta, porro continuatur, & continuata possessione continuatur dominium. Cultura utique & cura agri possessionem quam maxime indicat. Neque enim desidero, vel desideravi unquam, ut tunc demum videatur quis possidere, si res mobiles, ad instar testudinum, dorso ferat suo, vel rebus immobilibus incubet corpore, ut gallinae solent incubare ovis. Praeter animum possessionem desidero, sed qualemcunque, quae probet, me nec corpore desisse possidere.

Cetera dixit Theodorus meus. Et probo, quod Jurisprudentiam illam naturalem, quam inter varias Gentes, nullo foedere conjunctas, obtinere Pomponius docuit in *d. l. 5. §. 2. ff. de Capt. & postlim. revers.* & Proculus in *l. 7. pr. eod.* quod, inquam, illam Jurisprudentiam naturalem

ralem inter diversas Gentes non prolixius sit exsequutus, nam ipse Thomafius ad eas *LL.* fileat. Sed non fileat Titius, Antecessor haud ita pridem Lipsiensis, qui etiam huic liti se obtulit, nam is *Dissertatione de Dominio in rebus occupatis ultra possessionem durante* §. 31. & 32. intelligit de *LL.* de iis, qui nullo plane jure latrocinantur & praedas agunt, quosque ideo *latrunculos* & *praedones* appellamus. Omnino perperam, ecce enim Pomponius in *d. l. 5. §. 2.* exponit, quid juris sit inter Gentes, quas nullum foedus conjungit. *Hi, inquit, hostes quidem non sunt, quod autem ex nostro ad eos pervenit, illorum fit, & liber homo noster ab eis captus servus fit & eorum.* Et ne putes, ut Titius putabat, injuria id fieri, mox addit, etiam Romanos eo jure Gentium uti. *Idemque, ait, est, si ab illis ad nos aliquid perveniat.* Igitur quicquid dicat Titius, quicquid Maevius, ex possessione Jure naturali & Gentium suspenditur dominium, nisi pacta dominium, citra possessionem, defendant, ut defendit jus cujusque Civitatis proprium. Reliqua Titii ex iis, quae ipse dixi, & quae dixit Doctissimus Graver, mole ruent sua.

C A P U T II.

*Mare terrae proximum an & qua ratione occupari
& dominio teneri possit.*

CUm, ut inquit ille, *pervium cunctis iter, & communis usus omnium rerum fuit*, non est, cur iter ad maris magis quam ad terram praecludi placeat. Iter ad terram fuit pervium, quo, tanquam praemium indu-

striae, occupanti cederet ; iter ad mare & eo fini patuisse dicemus, sive privatus, sive populus occupet. Nihil in medio relictum est, quod separatim haberi poterat: tanta erat priscorum mortalium aviditas & habendi cupido, ut, quo hanc exprimeret, Caelos ipsos affectasse fabuletur antiquitas. non est igitur, ut mari parcitum dicamus. Is autem illud occupasse cenferi debet, qui navi una vel pluribus eo animo in vacuum ejus possessionem venit. Sed quemadmodum simplicissima sunt cunctarum rerum initia, occupatis terris, non aliud mare occupatum videri potest, quam quod terras illas alluebat: oras quippe tantum legebant veteres, non ausi ulterius fragilem committere truci pelago ratem. Igitur in mare litoribus proximum quum descenderent animo sibi hoc habendi praecipuum vel piscationis, vel transektionis, vel qua alia causa, ejus dominium possessione quaerebant, utique ex nostra sententia quaesivisse sunt existimandi.

Sed vero dominium quia non agnoscimus Gentium jure citra possessionem, dispiciendum est, quam late maris proximi dominium videatur patuisse. Dicimus equidem ex *l. 3. §. 1. ff. de acquir. vel amitt. possess.* parte fundi possessa, dummodo is sit possidentis animus, universum possideri ad usque terminum, sed sine certo termino, atque ita incertae partis, nulla est possessionis acquisitio *d. l. 3. §. 2.* hic autem, si mare spectes ἀόριστον, certus terminus vel penitus nullus erat, vel certe ignotus. Quin si aliquem constituere velles possesque, considerandum esset, meri Juris Gentium non esse, quod ait *d. §. 1.* eo enim possessio non capitur, nisi totum Q. D. A. in ejus, qui possidere vult, potestatem redigatur, ut diximus *Capite proximo*; neque etiam mero Gentium Jure aliam ea res explicationem habet, unoquoque alioquin universum occupaturo.

Quum

Quum igitur eo Jure terrarum Domini nequeant imperare mari, nisi qua possident, & possessione remissa remittatur quoque dominium, res exigit, ut porro videamus, quousque a Populo vel Principe Civitatis, in quam coierunt singuli, mare terris vicinum perpetua possessione videatur teneri; de maribus exteris post acturi. Et quidem his, quae modo disputavimus, omnino consequens est, in tantum mare intelligi possessum, in quantum navigatur, & navigatur perpetuo. Sed quis perpetuo naviget & legat littora? quis animo semper domini & eadem ab terris intercapedine? vix illud, nisi valde ἐν πλάτει, admittendum est. Existimem itaque, eo usque possessionem maris proximi videri porrigendam, quousque continenti potest haberi subditum; eo quippe modo, quamvis non perpetuo navigetur, recte tamen defenditur & servatur possessio jure quaesita: neque enim ambigendum est eum possidere continuo, qui ita rem tenet, ut alius eo invito tenere non possit. Unde dominium maris proximi non ultra concedimus, quam e terra illi imperari potest, & tamen eo usque; nulla siquidem sit ratio, cur mare, quod in alicujus imperio est & potestate, minus ejusdem esse dicamus, quam fossam in ejus territorio.

Qualem autem potestatem sit intelligendum, ut mare sit subditum, ob periculum ejus, quod Graecis Σωρίτης dicitur, ambiguae est definitionis: nec minima sufficit, nec sane maximam desideramus, sed quae intellectu magis percipi, quam elocutione explicari potest, ut alias de iis, quae certam terminationem non habent, Julianus ait in l. 13. ff. de solution. Hinc videas, priscos Juris magistros, qui dominium in mare proximum ausi sunt agnoscere in regundis ejus finibus admodum vagari incertos. Sunt, quid id extendant ad milliaria centum, sunt, qui ad sexa-

ginta, de utriusque Bodinus *de Republica Lib. I. C. 10.* Seldenus in *Mari C. l. Lib. I. C. 22.* &, ut hunc etiam addam, Pacius in *Discept. de Dominio maris Hadriatici p. m. 22.* sunt etiam qui ad duorum dierum iter, ut, si tanti sit, discere potes ex Hieronymo Brixiano *de Finibus reg. C. VII. n. 12. § 13.* alii rursus aliter, de quibus Gryphiander *de Insulis C. XIV. n. 20. § seqq.* Sed rationem, qua haec omnia nituntur, nemo facile probaverit: ut nec eam, qua placet, dominium in mare extendi, quousque extenditur oculorum acies. Attamen & ita definire videtur Philippus II. Hispaniarum Rex in *Legibus Nauticis*, quas anno MDCLXIII. ult. Octobr. Belgis dedit: nam *Tit. 1. §. 27. earum LL.* externi hostibus suis vim facere vetantur, quo e terra prospici potest; eatenus igitur mare subditum propani constat. verum & hoc nimis laxum est vagumque, vel utique non satis certum. An enim, quo longissime patet prospectus? idque ex qualibet terra? littore? arce? urbe? an quo quis nudis oculis prospicit? an quo repertis nuper telescopiis? an quo vulgus? an quo qui cernit acutus? sane non quo acutissimi, apud Veteres enim memorantur, qui ex Sicilia Carthaginem usque viderunt. fluctuant ergo etiam haec in incerto.

Quare omnino videtur rectius, eo potestatem terrae extendi, quousque tormenta exploduntur, eatenus quippe cum imperare, tum possidere videmur. Loquor autem de his temporibus, quibus illis machinis utimur: alioquin generaliter dicendum esset, potestatem terrae finiri, ubi finitur armorum vis; etenim haec, ut diximus, possessionem tuetur. Neque alia sententia usi videntur Ordines foederati Belgii, qui anno MDCLXXI. 3. Jan. decreverunt, navium Praefecti ad oras externorum Principum

pum in mari salutarerent, quousque tormenta urbium & arcium exploduntur, prout Princeps ejus orae, qua de agitur, voluerit; ut autem resalutare velit, ejus arbitrio relinquendum. hoc addito, esse quemque in ditione sua plenissime dominum, & advenam quemque subditum. Recte, si quid judico, non recte in hac specie alii Principes; sed de his nonnihil dicemus, ubi de occupatione maris exteri actum erit.

C A P U T III.

Mare exterum an & qua ratione occupari & dominio teneri possit.

MARE exterum appello, in quod Civitas e terra dominari nequit. Posse autem & illud occupari, & occupatum fuisse aliquotiens, negandum non videtur. Evenit hoc, ex quo fluctibus ignotis insultavere carinae, certe evenire potuit, si is fuerit navigantis animus. Totum, qua patet, mare non minus Jure Naturali cedebat occupanti, quam terra quaevis, aut terrae mare proximum. Sed difficilior occupatio, difficillima possessio; utraque tamen necessaria ad asserendum dominium, jure videlicet Gentium, ad quod ea disputatio unice exigenda est. Nam ex iis, quae *Cap. I.* enarravimus, certum est consequi, dominium maris prima ab origine non fuisse quaesitum nisi occupatione, hoc est, navigatione eo animo instituta, ut qui libera per vacuum ponit vestigia princeps, ejus, quod navigat, maris esse velit dominus; certum est & porro consequi, non aliter id dominium retineri, quam possessione perpetua, hoc est, navigatione, quae perpetua

tuo exercetur ad custodiam maris, si exterum est, habendam: ea namque remissa, remittitur dominium, & redit mare in causam pristinam, atque ita rursus occupanti primum cedit. Utque haec fuerunt prima ab origine, ita adhuc sunt, cum sola lex Civitatis, ut dixi probavique, dominia rerum defendat etiam sine possessione; lex vero Civitatis quum extra Civitatem sit nulla, satis est liquidum, quaestionem de dominio maris, si, ut vulgo, diversi Principes ex jure manu confertum veniant, meri esse Gentium Juris, & ex regulis de possessione, eo Jure ratis & probatis, dijudicandam. Secundum haec si Civitas mare aliquod frequentet animo sibi habendi separatim, & tamen post frequentare desinat, ejus quidem Civitatis subditi non recte illud mare sibi occuparint, sed recte exteri, qui Civitatis illius legibus non reguntur; his quippe omnibus ex Naturali Gentiumque Jure aequè patet maris imperium, simulatque amissa est occupatione quaesita possessio, nisi tamen qui occupat, ab exteris, ut eo abstinere, pactis foederibusque obtinuisset: tunc enim illud jus, quod relicta possessione intercidebat, ad Jus Civitatis censebitur redactum, eritque adeo salvum, deserta quamvis possessione. salvum ex pactione quod ad externos, ex lege quod ad subditos.

Hujusmodi autem pacta & foedera de conservandis rerum dominiis cum inter Gentes esse soleant, ut disseruimus *Cap. I.* dicendum videbatur, occupato semel mari, ejus dominium tam diu occupantis esse, quam diu is jure suo non cesserat. Sed tantum abest, ut, quod de caeteris rebus placuit inter Populos foederatos, amicos, socios, id pertinere credamus ad occupatum mare, uti, quando ita res tulit, contra disputatum pactisque prospectum sit. Quod ea foedera nec intervenerint, nec inter-

venisse possint intelligi, arguit suo quaeque Gens exemplo, dum omne mare, olim licet occupatum, non ex concessione alterius, at suo jure navigat; etiam illud mare, quod constat animo non esse habitum pro derelicto. non alia ratione haec defendimus, quam quod secundum regulas Juris Naturalis mare, desertum possideri, redeat ad communionem pristinam: neque enim hic locus est sententiae Proculi, exstimantis, non desinere rem esse domini, nisi ab alio possessa fuit, sed potius Juliani, desinere quidem omittentis esse, non fieri autem alterius, nisi fuerit possessa, & recte, inquit recte Paulus in l. 2. §. 1. ff. pro derelict. Etiam Grotius de Jure B. & P. Lib. II. C. 3. n. 11. & de Mari libero C. V. mare, qua occupari posse concedit, non diutius occupantis esse, quam durat occupatio, bene observat, sed male, ut videtur, ejusce rei rationem arcessit a natura maris, quae, si credere dignum est, possessioni reluctatur. verum suo haec loco.

Tantum igitur si praestet possessio, summo opere interest scire, mare exterum qua ratione occupetur possideaturque. Intelligimus vero occupari a singulis pluribusve, qui, ut sibi quaerant, vacuum mare navi vel navibus secant suis. Vacuum mare dicimus, in quod nemo, occupandi animo, descendit, vel, si descenderit, possidere iterum desit; desinit autem possidere, qui illud mare domini animo non frequentat amplius. Unde consequitur, Hannonem, verbi gratia, in Periplo suo nullum mare occupasse, nam, ut ex eo discimus, non hic illi fuit animus, sed duntaxat πάλαις κτίζειν Λιβυφονίων. Quin si occupasset, reverso Carthaginem Hannoni nihil juris fuisset reliquum, remissa utpote possessione. Occupandi & possidendi animus non statim colligitur ex sola navigatione; fac enim non tantum condendarum urbium, ut Hanno, sed

sed mercaturae causa, sed peregrinandi voluptate aliquem navigare, nec ea praeter aliud cogitare, non is maris, quod navigat, efficietur dominus possessorve, cum utique palam desit animus, & sine animo titulus. Immo si quis vel piscationis ergo mare ingressus sit, nisi de animo aliunde constet, occupasse non censebitur, ut nec possidere, si quis idem mare quotannis, quot mensibus vel etiam quotidie ad piscandum pergat ingredi: quotus enim quisque est piscatorum, qui imperium maris animo versat suo, & non optet pisces magis quam illud nancisci? apparet inde, vix mare, ut occupetur ac possideatur, frequentari, & si fiat, difficilem esse probationem animi.

Non tamen aliunde magis pellucet ille animus, quam si quis post occupationem mare ita pergat possidere, ut vires suas explicet ad tuendum, quod nactus est, dominium. Illustre ejus rei exemplum est in mari Mediterraneo, quo de agit *L. IX.* quam interpretati sumus. Fuisse id aliquando Romanorum, non puto dubitandum, quippe quod ipsi, qua Europam, Africam Asiamque alluit, imperio suo complectebantur; ut ita nemo fuerit, qui juxta possidebat, & inde quid juris in eo sibi assereret potestate terrae. Nec id duntaxat, sed postquam occupassent vel Jure Naturae, vel Jure Belli, quatuor classibus, quas habebant perpetuas, perpetuam quasi detentationem habuisse existimandi sunt: quo, si ullo, modo maris imperium jure optimo tenetur. Prima classis stetit ad Misenum, secunda ad Ravennam, tertia ad Forum Julium, quarta ad Byfantium. de his ab aliis fatis & super dictum est. Illis autem classibus Romani non tantum submovere poterant mari, sed & quadam indagine includere & opprimere quicquid erat peregrinarum navium; idque ita praestitum est, ut tandem Mediterraneum mare, nisi a
Ro-

Romanorum subditis & classibus publicis, non navigaretur, nec quisquam adeo esset, qui eorum possessionem jure vel injuria turbaret. Caeterum & alia adhuc ratione illud mare possedisse Romanos ejus conditio videtur demonstrare, nam ecce ab aliis non nisi per angusta Herculeum & Thracium freta adiri poterat, eademque freta utrimque Romani possidebant: qua fere ratione freta in potestatem rediguntur, ut porro dicemus *Cap. prox.* Qui freto perfecte imperat, etiam mari, quod eo limine aditur, imperare dicimus, si is sit ejus animus, nec alii juxta possideant. Hoc cum sit, & mare ejus reperiatur magnitudinis, ut facile alios, qui occupent, admittat, etsi fretis imperetur, adhuc tamen classium custodia ad tuendam possessionem necessaria erit. Juxta mare Mediterraneum autem orbis erat ubicunque Romanus, & si quid minus fretis imperassent, supplebat classium custodia, qua, ut diximus, perpetua utebantur. argumentò haec sunt, quam recte id mare ab Mela & Romanorum aliis *nostrum* appelletur.

Romani quoque eam Oceani partem, quae Britanniam & continentem interest, imperii jure tenuerunt, & quia utrimque possidebant, & quia ipsum illud fretum etiam classe Britannica tutabantur. Meminit hujus & *l. 46. ff. ad Sctum Trebell.* & victa hinc Britannia dicitur allui *aqua Romana* in versu apud Scalig. *Catal. I. Tit. 7. p. 210.*

Illam procul nostro semota exclusaque caelo,

Alluitur NOSTRA victa Britannis AQUA.

constaret etiam versus, si legeres *Britannia*; nescio, an, sicut Illyridem & Perfidem dicimus, alius quoque sit, qui *Britannidem* dixerit. Romanos alibi in Oceano classem habuisse perpetuam, quin vel unius navis custodiam, non scio memoriae esse proditum: adeoque si reliquum Ocea-

num, quamvis totum, qua navigatur, iis etiam attribui videas, non ulterius tamen ditione sua tenuerunt, quam continenti, ab his possessae, erat subditus; nec enim continentis potestas ulterius extenditur, ut late defendimus *Cap. II.*

Nec tamen est, quod quis credat, praecipuum in mari jus dare nos praecipuae armorum classiumque potentiae; ea Jurisprudentia non utimur, sed naturali illa, quae aequale jus reddit omnibus, armatis juxta ac inermibus. Dominii maritimi titulum diximus esse occupationem. Haec autem iusta non est, nisi quaeratur aut iusto bello, aut navigatione maris, cujus possessio non occupata est vel derelicta. Unde si quis vel una scapha occupet mare non occupatum & possessum prius, isque eadem scapha, domini animo, pergat navigare idem mare, non ille nisi injuria eo submovebitur, non secus ac si quis occupato post primam communionem fundo invitatus depellatur. Ut quisque possidet, ita quominus possideat, vim fieri veto; si deturbetur, & injuriae par sit, poterit vim vi repellere, cum ita a natura fit comparatum, & omnes leges omniaque jura permittant. Sed quod de classibus diximus, eo pertinet, ut sciamus, non alio fere modo, sane non illustri magis, de retenta maris possessione constare posse. exstructis ad tutelam maris classibus nemo de eo dubitaverit, quum ita ipso facto dominium exerceatur: alias vulgo navigatur animo plane diverso, alieno certe ad tuendam possessionem.

C A P U T IV.

Quaedam adhuc de occupatione & possessione maris, utraque quid praestet, & inde quid sequatur.

QUae haecenus de dominio Maris indicavimus, procul sunt ab auctoritatibus & testimoniis, repetita unice ab origine domini & receptis Jure Gentium de acquirenda vel amittenda possessione regulis. Et has fere in Jure Civili Romanorum habemus scriptas, nisi quod eo Jure possessionem retineamus solo animo *l. 4. C. de acquir. & retin. poss.* probantibus illud cujusque Civitatis legibus, quarum ratio, utique respectu maris, inter diversos Populos habenda non est: caeteroquin quae de occupatione, quae de possessione cum animi tum corporis attulimus, tam spisse a JCTis Romanis sunt prodita, ut, si haec proferam, mihi & aliis molestus sim. Possessio autem cum in usu consistat, imo sit ipse usus, ut Cujacius probavit in *Parat. ad Tit. C. de acq. & ret. poss.* latius intelligimus, usum maris, si adsit affectio domini, pro possessione esse habendum. Atque ille usus cum unice absolvatur navigatione, quemcunque demum ea fructum fert, constat, solam navigationem heic fungi vice possessionis, uti Caepolla, Gryphiander alique Juris Magistri recte observarunt. Non recte ab his diversi abeunt Strauchius *Dissert. de Imperio Mario C. V. VI. & VII.* & passim Seldenus, qui creatis domi archigubernis, propositis Edictis, aliisque vanis & tralatitiis jubendi imperandique modis possessionem maris servari sibi persuadent. Praeter & supra animum desideramus incubationem, &, quae

Græcis audit, κατοχὴν tam in adipiscenda quam retinenda possessione, nam, ut breviter dicam, disputationis nostrae summa haec est: non continuo maris dominum effici, quid illud intraverit, quamvis vacuum, cum deesse possit animus, neque tamen, si non intretur, ejus dominium potuisse quaeri, cum sine occupandi facto non obtingat; rursus, si corpore & animo quaesitum est, non nisi eadem ratione servari, requiri igitur possessionem continuam, & hanc, ni etiam corporalis sit, nullam esse censeretur autem corporalem potestate terrae, si mare proximum sit, si exterum, navigatione perpetua vel statione perpetuae classis. His modis incumbendum est mari, animo nudo nihil hic possidetur, certe nihil, quod exteris, rursus occupantibus, praejudicet.

Hinc velim colligi, maria sive nunquam occupata, sive occupata olim & post relicta vel animo solo, vel corpore solo, vel utroque, nunc denuo cedere occupanti, quemadmodum res plane nullius. De maribus ad his olim occupatis, quorum hodie vix nomen & memoria supersunt, dubitari nequit, dabimus suo loco Gentium eade re exempla, ab his autem, qui hodieque rerum potiuntur, difficilior est inspectio. Sed vero, quantumvis nunc Gentes dari largiremur, quae mare aliquod jure olim occupant, injuria tamen hodie se illius dominos praedicare puto verum: cedo enim mihi nunc aliquod mare, quod domini animo possidetur, hoc est, perpetua detentione servatur? nullum, hercle, nullum est. Solam mentem & affectionem domini agnosco, at incubationem corporalem exquiro, nec invenio. Quin vel illa perfecta possessio maris Mediterranei, quod olim Romanorum fuit, cum majestate Imperii remisit. De Angelis Venetisque qui dicemus? illine mare suum possident? ubi vero eorum
non

non interrupta detentio, ubi classes perpetuae? non sane in Brittannico vel Adriatico. Sed de his aliisque, qui imperium Maris sibi hodie adrogant, dicam *Capitibus* aliquot *proximis*. Interim hoc servemus, omne mare, quod in littorum vicinia non est, vacuum esse, utpote vel nunquam possessum vel possideri desitum; me igitur, aequae ac quemvis alium, ejus herum esse, si occupem, herum manere, si insidere pergam.

Praeterea scire refert, quid praestet occupatio maris & possessio; id videlicet, ut mare occupatum possessumque transeat in dominium, in proprietatem occupantis possidentisque: adeo ut non secus de eo possit statuere, ac quilibet solutus legibus Princeps de ditione aut paterfamilias de re sua. Neque enim Hugoni Grotio *de Jure B. & P. Lib. II. C. 3. n. 13.* concedendum est, sine proprietate solum imperium acquiri in nescio qua maris parte occupata, eoque referenda esse Antiquorum de dominio maris testimonia, nam probetur, ut probabitur deinceps, nihil quicquam obstare, quominus mare censeatur esse proprietatis capax, utique nihil etiam vetat, cur idem jus, quod occupatis rebus caeteris, mari quoque tribuamus. Imperium & proprietas in Civitate differunt ea ratione, quam expedit Seneca *Lib. VIII. de Benefic. C. 4. & 5.* in mari non differunt, nisi eos, qui occupatum mare transmittunt, sub imperio occupantis esse placeret contendere, quamvis ne hoc quidem ad ipsum mare. Si plures occupassent, hique unum, qui imperio emereret, electum ivissent, mox proprietatem adgnoscerem distinctam; nunc, quia nihil horum est fuitve unquam, unum eundemque & Principem maris renuncio & vere dominum; simulque ei hanc potestatem tribuo, qualem optimam maximam Jcti solent adscribere dominio. Itaque,

ut quisque rei suae liber est moderator & arbiter, ita dominus maris poterit id ipsum vendere, permutare, donare, in solutum dare, aliisve modis ex animi sententia de eo statuere. Quod tamen ita verum esse accipimus, ut is, qui jure suo cessit, ex regula vulgari non transferat plus juris, quam ipse habet, hoc est, citra possessionem nullum.

Causam domini maritimi sequuntur & alii effectus, non aequae quidem omnibus probati, sed tamen ex definitione proprietatis necessarii. Animadvertas etiam eos, qui maris dominium concesserint, in assignandis ejus effectibus valde esse sollicitos, & vel exiguos admittere vel nullos, quod factum non oportebat. Non est, cur dominium hic minus efficiat, quam in terra, aut terrae quavis parte; ac proinde dicimus, qui mare post justam occupationem detinet, posse etiam ejus navigatione aliis vel pure interdicere, vel sub conditione. Pure, ut si quocunque modo jubeat eo abstinere, piscandi, transeundi, vel qua alia causa. Etenim transitum, quamvis inermem & innoxium, a domino recte prohiberi omnino est dicendum, licet rursus contradicat *ὁ Μέγας de J. B. § P. Lib. II. C. 3. n. 12.* de terra marique illud ipse negat, sed nullo jure. Nemo, me invito, re mea recte utitur fruitur, alia est humanitatis, alia juris regula, at longum esset id argumentum digne persequi. Sub conditione navigatio prohibebitur, quum maris usus, caetera concessus, in hac vel illa specie negetur: ut si quis piscari velit, si eo vel eo transmittere, si has illasve merces portare, si non salutare, vel non eo, quo imperatum est, modo, si non vestigal solvere, & quae ejus generis sunt sexcenta. haec enim recte imperat, qui imperat mari, seu extero, seu proximo.

Quo

Quo jure, ut olim Byfantini Byfantino, ita barbaricis faeculis freto, quo mare Balticum aditur, tributa impo-
fuerunt Danorum Reges, cum utrimque Selandiam & Scan-
niam possiderent. Illud autem amisisse videbantur, post-
quam Suedorum Reges Scanniam habere coeperunt, si non
iis id pactis cum Suedo conservatum esset; nam ut olim
totum Danorum erat, qui utrimque possidebant, & fre-
to tantum non perfecte imperabant, ita dimidium Suedis
cessurum videbatur, postquam totum alterum latus jure
victoriae occuparant. Sicuti enim urbe capta, etiam ter-
ritorium ejus urbis victori cedit, ita & mare, quod jure
terrae, ei mari assitae, qui victus est, habebat. Sed hac
in re; ut diximus, pactis est prospectum. Caeterum mi-
rum est, restituta forte Hispanorum potentia, si non hi
eodem jure Gaditanum fretum subjiciant, primo quidem
levi tributo (difficillimum alioquin ea res initium habe-
ret) praetextu si non luminum; saltem tutandi mare Me-
diterraneum a piratis, qui ex vicina Africa excurrunt, de-
inde gravi & usque graviori. Et sane in ultima Hispania
& Africa (quippe utrimque possident) munimento aliquo
exstructo, additoque paucissimarum navium praesidio ve-
tigal illud non nimis difficilem explicationem haberet,
utilitatem vero immensam.

Ut salutetur, & quo modo salutandum sit, recte etiam
diximus imperare, qui imperat maribus fretisque. Atque
inde constat, Ordines Hollandiae anno MDCCLXX. 16. *Maji*
optimo jure decrevisse, in freto Baltici maris Regis Da-
niae arcem ~~Hronenburg~~ salutandam, ut Danus Rex voluif-
set, dummodo ne Belgis, quam aliis inferatur iniquior
conditio. quo spectat etiam, quod anno sequenti ab foe-
deratis Belgis generaliter decretum & a nobis relatum est
Cap. II. Neque igitur probandum, quod constituit Phi-
lippus

lippus II. Hispaniarum Rex in §. 23. *Tit. I. LL. nauticarum*, quas anno MDLXIII. ult. *Octobr.* Belgis dedit, cum primum aplustre, quo Hispaniarum insignia expressa sunt, submitti salutandi arces & urbes externorum Principum ergo vetuit. Neque similiter probandum, quod classis Francicae Praefecti anno MDCLXVIII. a Duce Florentino extorserunt, ut arx Liburnensis prior explosis tormentis classem salutaret, in caetris Italiae locis idem factum dictitantes. historiam habet Aitzema, *Lib. XLVIII. p. m. 754.* Non oportet in mari, alterius Principis continenti proximo, leges dare, sed accipere, quum ibi simus subditi, non secus ac in ejusdem territorio, ut satis ostendimus *L. II.* Sed proficiscuntur haec a superbia dominantium, quae solet justitiam metiri armorum potentia &, ut Poëta ait,

Jura negat sibi nata, nihil non arrogat armis.

C A P U T V.

Oceanus Britannicus an Anglorum sit, fueritve unquam?

NUllum mare hodie teneri dominio alicujus Principis supra diximus, & ex regulis domini probavimus. Ex iisdem non erit difficile Anglos, Venetos & Januenses, qui in primis hodie contradicunt, submovere, & pro libertate vel, ut propius dicam, pro communione omnium nunc marium causam dicere. Anglorum partes multi egerunt, sed primas Joannes Seldenus toto *Libro II. Maris Clausi.* Is *Capite I.* se probaturum recipit dominium maris Britannici perpetua occupatione in sua usque tempora obti-

obtinuiffe, qui Britanniae imperitarunt, five antiqui Britanni, five Romani, five Anglosaxones, five Dani, Normanni, & qui eos exceperunt, Reges. Hoc fi praeftiterit, herbam dabimus, fed non praeftitit; fingulas ejus rationes, etiam ex Arabia petitas, refellere non constitui, at ea duntaxat fuggerere, quae subvertendis omnibus videri poffunt idonea.

Largitur ille, & verum eft, occupationem poffeffionemque maris, neque aliud, occupanti poffidentique imperium tribuere five dominium, his enim vocibus hic utimur promiscue. Ego vero non largior, has, quas recitat, fubacti maris probationes in hanc rem fufficere, utique ut credamus, Britannos ab eo tempore, cujus exiftat memoria, ad aetatem ufque noftram perpetuo fuiſſe dominos Oceani, quo de agitur. Non diſputem, quouſque ille Oceanus quaquaverſum porrigatur, facile patior Seldenum de amplitudine Britannici certantem, modo ne vincat in eo, quod res eft. Putat tamen de priſcis Britannis ſe id. confeciſſe *Cap. II. & III.* quid autem ibi? docet eos navigaſſe mare ſuum, docet piſcatos fuiſſe, atque ita omnimodo habuiſſe maris uſum, ſine quo occupatio, ut neque poſſeſſio poſſunt intelligi. At vero ex ſolo maris uſu neutram recte colligi in praecedentibus abunde me dixiſſe recordor; ecquis enim non navigat & piſcatur ſine ulla imperii deſtinatione? vel, ut verius dicam, quotus eſt quiſque, qui eo animo navigat & piſcatur? Iterum cum alicubi Solinus ait, *Britannos dentibus mari nantium belluarum inſigniviſſe enſium capulos*, quis, niſi partium ſtudio abreptus, ex eo maris imperium Britannis vindicet? deducit hoc Seldenus longis conſequentiis, ſed, ut conjicere eſt, ſic ſatis levibus; ceperint ipſi Britanni has belluas, trans mare uſque & uſque cucurrerint, ani-

num occupantis possidentisque desidero. Hunc ipse elicit ex hisce Julii Caesaris *de Bello Gall. Lib. IV. C. 5.* *Neque temere praeter mercatores ad illos adit quisquam, neque iis ipsis quicquam, praeter oram maritimam atque eas regiones, quae sunt contra Galliam, notum est.* Seldenus tam cernit acutum, ut ex eo solo constare existimet, Britannos mari suo submovisse, certe prohibuisse, quicquid erat exterorum praeter mercatores, neminem, iis invitis, adpulisse ad littus suum, quin vel eos, quos ex Gallia in Britanniam trajecisse prodidit antiquitas, tale quid non fuisse ausos, nisi impetrata a Regulis Britanniarum maritimis venia. Haec, inquam, omnia ille ex Caesare, quem tamen certum est non de interdicto maris usu agere, sed unice de non frequentata temere ab Gallis Britannia. Sic ultimam Thulen paucis aditam, nemini interdictam accepimus.

Longum esset, neque mihi decretum, per omnes aetates Populi Anglicani singulatim Seldeno occurrere. Navigaverint illi mare Britannicum ad haec usque tempora, navigarunt id ipsum Franci, Belgae, Suedi, Dani, alii: ergo & hi sunt domini maris Britannici? quidni, cum eorum eadem sit occupatio, eadem possessio? sed Angli magistratus maritimos crearunt, Comitem littoris Saxonicum per Britanniam, deinde Praefectum maris sive classium, imperarunt vectigalia, permiserunt vel negarunt transitum piscationemve, mari terminos posuerunt, & quae alia sunt domini maritimi argumenta. Denique acta publica Gentis, Scriptorum fides, Populorum testimonia illud maris imperium agnoscunt. Nihil tamen haec, si vel liquidissima sint, quicquam proficiunt sine occupatione perpetua; facile est clasium Praefectos creare domi, vectigalia imperare, sed suis, imo vel aliis ex formula Edicti;

Et; facile item Interdictis tralatitiis prohibere externos mari, piscationi, & ex tabella regere Oceani fines, sed nunquid haec jure fiant, una nobis lis est. Et negamus, si non adsit praesens lubacti maris argumentum, animi corporisque possessio: non quod opiner, qui Britanniae imperarunt, non aliquando occupasse & animo sibi habendi tenuisse mare Britannicum, at quod remissa possessione mox remiserit imperium. Romanos, cum Insulae potirentur, lubens adfentior aliquamdiu freti Britannici fuisse dominos, incubante ei classe Britannica, sed cedo mihi alias Saxonum, Anglorum, Normannorum, Regumque Britanniae insequentium classes, quae eo animo navigarunt & possessionem ejusce maris sunt tuitae. Seldenus equidem ambitiosa eruditione haec eorum imperia maritima extollit, sed persuasus sum, non aliud fere exemplum occupati & possessi maris ab eo suppeditari, quam Edgari Regis, qui *omni aestate, emensa statim Paschali festivitate, naves per omnia littora coadunari praecipiebat, & insulam circumvectus mare explorabat, ne quid piratae turbarent, viriliter hoc agens ad defensionem contra externos regni sui, ut haec ex monacho Malmesburienſe aliisque narrat Lib. II. C. 10.* Quicquid ad instar ejus protulit, ad continuam praesentemque maris possessionem non pertinet, ut nec forte illud Edgari exemplum, annua, bima, trima, ut ita dicam, mare insidentis classe, quantumvis numerosa. Perpetuo oportet possidere, cum intermissa alioquin possessione intermittatur quoque dominium. Quinimo si vel olim Angli possederint, cedo mihi hodie, ne verba perdam, vel classem, vel navim unam, quae Populi Anglicani nomine mare Britannicum navigat, & tamen hoc agimus, ut mare hodie pronunciemus liberum & commune. Si nihil ejusmodi quaeras

vel invenias, & solius animi possessio heic sit nulla, sententiae nostrae sua utique constat ratio.

Quod cum sit, intelligimus Anglos in eo mari non habere aliquod jus praecipuum, nisi qua e terra possident; neque tantum non habere in Oceano Britannico, qualem nobis latissime ostendat Seldenus, sed nec in freto illo, quod Franciam Angliamque interluit. Utrumque nec possident, nec possederunt unquam, nisi cum olim bello Franciae partem occuparant; ab uno latere Angliam habent, ab altero Franci & Belgae perpetuo dominati sunt, non minus quam Angli in Britannia. Sed etsi utrumque possiderent, ne in freto quidem ipso id jus haberent, nisi, ut olim Romani, classe id perpetua, aliave navium custodia tenuissent, nam propter introitus & exitus latitudinem jure terrae utrumque possessae mare hic dici nequit possideri. Attamen & ea ratione illius freti dominium Anglis suis arrogat Temple *Introduct. Histor. Angl. p. m. 220.* a temporibus scilicet Guilielmi, qui *Conquestor* dicitur, & Normanniae dux erat. ridicule, quum sic vel tantundem Normanniae, ac ita hodie Francorum Regi accederet. Sed potestas continentis non ultra extenditur, quam mare haberi potest subditum; absque eo si esset, repente quis Hispaniarum Reges dicat esse dominos Oceani, qui Hispaniam interest & Americam, utrumque quippe possidentes; & vulgo etiam ajunt, hos sibi Oceani imperium adscribere, verum rectius id negabimus *Cap. VII.*

De re ipsa cum sic satis, ut opinor, clareat, non est, cur Seldeno invidemus splendida testimonia, quibus ille ad tuendam Gentis suae gloriam longe lateque superbit. apparatus eruditionis agnosco ingentem, vim probandi non aequae. Non refutavero testimonia vel domestica, uti
sunt

sunt pleraque, vel etiam extranea, nam ut illa sint, nolim dominium maris arcessi ab errantium testimoniis. Scriptores, barbari praesertim saeculi, quibus ille non semel utitur, in descriptione urbium, marium, locorum mire caecutiisse videas. Geographus, nescio quis, Arabs apud Seldenum *Lib. II. C. 1. Maris cl.* commemorat *mare Anglorum*, esto; sed idem *eod. loc.* ita inquit: *a Toletu ad S. Jacobum, quod situm est super mare Anglorum, novem stationes &c.* mox locum, ubi sita est S. Jacobi urbs, appellat *promontorium maris Anglorum*, locata sic urbe, quam Hispaniae esse constat, ad mare, ut ipse vocat, Anglorum. In ipso Zosimo licet hujusmodi plura deprehendere. *Libro III. Parisios* dicit *Germaniae oppidulum & Bononiam inferioris Germaniae civitatem. Lib. eod.* ait *Rhenum in Oceanum Atlanticum effluere*. Non placet tricari de appellatione Oceani Atlantici, cum sciam, Veteres hunc vel eo usque exporrexisse; sed *Rhenum* dicit, & vel *Scaldis* intelligit, vel *Mosam*, quemadmodum observat Eyndius noster in *Chron. Zeland. Lib. I. C. 5.* adductis auctorum locis, quos Rheni appellatione similiter abusos probat. haec & id genus alia peperit Geographiae ignorantia & locorum, in quibus vivebatur, grande saepe intervallum ab his, de quibus habendus erat sermo. Deinde vel vera nomina, maribus imposita, dominium non tribuere plusquam manifestum est: etenim non aliunde fere haec sortiuntur, quam a vicinis, quas alluunt, Gentibus, & hinc bina quandoque a binis populis, utrimque accolis, non dominis. Ipsum Oceanum Brittanicum aliquando *Gallicum*, & *fretum Gallicum* dici scio aliis observatum, nihil tamen inde juris esse Galliarum Regi haud difficulter Angli fatebuntur.

Plus momenti adferre videntur Gentium testimonia,

quae illud Anglorum imperium agnovere. De confessionibus loquor, non injuria extortis, sed liberis & sponte factis: esse autem hujusmodi quorundum confessiones neutiquam negari poterit. At si, cum possiderent Angli, imperium sit agnitum, nihil, cum non possideant, agnitum videbitur, siquidem id quisque praelumitur cogitasse, quod juris est, atque adeo id, quod modo enarravimus. Aliud est, si his non possidentibus agnitum vel pactis conventis id palam fuerit actum, tunc enim, non secus ac ipsius Angliae subditi, intelliguntur renunciasse juri, quod naturaliter habebant, admissio, quod in Civitate est, dominio secundum ea, quae *Cap. I.* acta & probata sunt: sed id agnoscentibus praejudicat, & agnoscentibus duntaxat ex Juris regula, quae rem inter alios actam aliis nec prodesse, nec nocere saepe definivit. Oportet autem, ut illa agnitio dominiî maritimi sit aperta, nec eliciatur per consequentias, quales non semel levisimas nobis obtrudit Seldenus. Satis tamen videtur aperta, si quis paciscatur, ne sibi, altero inconsulto vel invito, liceat tot naves exstruere, ea magnitudine, ultra hunc illumve terminum navigare, ut sunt nonnulla foedera, quae nobis antiquitas servavit & refert Grotius *de Jure B. & P. Lib. II. C. 3. n. 15.* & toties laudatur *Maris clausi* auctor *Lib. I. C. 11.* ita namque paciscimur, ita diserte profitemur, maritimo aliorum imperio accurate nos fore subditos.

Videant igitur Franci, qui se tueantur adversus Britannos, si, quod ipsi ajunt, etiam a Britannis placuerit petendum, quantum navium liceret exstruere. Eandem quidem hi servitutem foederatis Belgis, cum de pace componenda anno MDCLIII. Londini inter Anglicae & nostrae Reipublicae Proceres ageretur, imponere conati sunt, sed nequicquam. Ut tamen regius Britannorum na-
vi-

vibus, tanquam Principi, reverentia haberetur, obtinuerunt in Pacis pactionibus, quae illis nobiscum intercesserunt anno MDCLIV. MDCLXII. MDCLXVII. & MDCLXXIV. & in §. 4. Pacis inter Carolum II. Angliae Regem & Ordines foederati Belgii illo anno MDCLXXIV. 19. Febr. factae expressum est, Ordines agnoscere, jus esse regiis Anglorum navibus, ut iis Ordinum etiam totae classes summum aplustre & supparum submittant in omni isto mari, quod Septemtriones & promontorium, quod *Finis. terrae* dicitur, interjacet. Sed quod ita accipiendum est, ut omnes pactiones, quas, ut bello abstinenceatur, paciscimur, nempe Anglis id competere, quia in id convenit, per se enim nihil in eo mari habent praecipuum. Porro & ita hoc accipi velim, ut ne credamus Belgas eo ipso Anglis concessisse illius maris dominium, nam aliud est se subditum profiteri, aliud majestatem alicujus Populi comiter conservare, ut haec explicat Proculus in *l. 7. ff. de capt. & postlim. revers.* fit hoc, ut intelligamus, alterum Populum superiorem esse, non ut intelligamus, alterum non esse liberum. Valent quidem & valuerunt diu navibus Batavi, sed tamen eorum classes Anglicis inferiores sunt. Quin si nec essent, ita nihilominus moribus Gentium obtinet, ut Respublicae Regnis assurgant, & qui invicem repraesentant, eodem jure utantur. Quare hoc dedimus Anglis in illo mari, quod sine macula nominis Belgici forte dari posset in quibuscunque aliis, nec tantum Anglis, sed vel Francis, quos potentia navali praestamus, utique olim praestitimus, nam multum potestatis, sub hoc praesertim Rege, in mari habere coeperunt. Itaque, ut finiam, Anglorum majestatem terrarum marique comiter observamus, sed negamus ex eo, quod mari observemus, adversus nos recte illius imperium jactare, & vel

ge-

generaliter de dominio Britannici recte sibi blandiri, & praeterea magis negamus, quod tertio quoque verbo inculcat Seldenus, imperium Insulae comitari ac perpetuo comitatum fuisse imperium maris. ast jam nimis etiam diu de folis Anglis exspatiati sumus.

C A P U T VI.

Mare Adriaticum an Venetorum sit vel fuerit unquam? an mare Ligusticum Genuensium? an quid Franciae juris in mare Mediterraneum?

Civitas Venetiarum vel maxime sibi vindicat maris Adriatici imperium. Vindicare negat Graswinkel in *Vindiciis maris liberi* Burgo oppositis; sed quid hominem laudo, quem, multa licet effutiverit in eo genere argumenti, quod tractamus, adversus Seldenum, Burgum, Welwodum, illaudatum tamen transmittersse constitueram, tam ipse, ut omnia, nescit, tam parasitum agit. Quid igitur ajat vel neget, perinde est; sat scio, vos ipsos, illustrissimi Veneti, non negaturos, quod animo semper toto fecistis testatum. Nemo vestrum est, qui non improbo iracundior Adria sit discessurus, si vel nullum vel alium ejus arbitrum putemus; & quamvis Viri docti vobis applaudant libris singularibus, ut applausit Joannes Palatius *de Dominio maris*, quamvis applaudant Commentariis & Consiliis, liceat tamen mihi pace vestra ab his vobisque dissentire. Auctoritatibus nolim pugnare, rationes desidero; & video, qui vos optime defendunt, eas ita inire: Venetos maris Adriatici dominium, et si id imperio ubique suo non ambiant, recte sibi adserere, dum-

dummodo modicum quid ad littus vicinis Principibus relinquatur, neminem alium id mare occupasse, nec quemquam juxta possidere, qui mare frequentat adeo; Venetos id jam per saecula aliquot possedisse neque vi, neque clam, neque precario; lapso Imperio Romano quasi in vacuum possessionem venisse, ac perpetuo quasi tenuisse vicinis videntibus, & invidentibus nonnunquam insulis, castellis, regibus, classibus; praescriptione igitur, ne quid aliud dicatur, undiquaque tutos esse; de possessione constare ex condita Venetiarum urbe in ipso, quo de agimus, mari Adriatico, ex decantata illius desponsatione annua, ex continua navigatione, ex praeliis & victoriis navalibus, quibus hostes suos mari toto non summovere tantum, sed ipsam aliquando Rhodum, illam olim maris dominam, subegere. Et dubitamus adhuc?

Repetenda & constituenda res est ex principiis de origine dominii. Quousque possident, eo usque imperant sine dubio; sed fac, eos aliquando occupasse mare, quae patet, Adriaticum, fac & aliquo tempore possedisse, attamen verum est, nunc non possidere nisi has maris partes, quibus ex continenti imperant. Qualis possessio intelligenda sit, satis, credo, *Cap. III.* evicimus; non igitur sufficit ea, quae dicis causa sit, non mare quotannis desponsare; sed quotidie ei incumbere oportet. Incumbimus equidem, ubi classes nostrae, aliis jure fugatis, animo domini navigant, sed has ubi domum revocavimus, desinimus possidere, & cum possessione amittimus dominium & quotquot sunt dominii compendia. Aliud dicendum esset, si vel quaevis navis, navicula, scapha, cymba ad tuendam possessionem maris vela dare atque iterare cursus pergat relictos, sic enim nec mari, nec dominio excedimus. Non tamen quaevis navigatio in hanc rem

idonea est, sed instituta eo animo, ut quaesitum dominium fervetur, quemadmodum *eod. Cap. III.* fumus exsequuti: alioquin nulla dies abit, qua non Venetinae naves conscendant, & mare Adriaticum, sed alio animo, frequentant; hic quo mores hominum multorum noscat & urbes, ille indocilis pauperiem pati quo se exhibeat, tertius denique, quo merces devehat, advehat una lucelli causa. Negotiatio maritima multa multis impertit, inquit Cicero *de Offic. Lib. I.* & sane non uno nomine habet ea res panem, habet dapes, sed qui ita navigant, ut fere sunt omnes, de imperio maris parum sunt solliciti, ad quaestus uberrimos unice animum adpellentes. Nec mihi compertum est Venetos alia fine navigare, utique non memini relatum, perpetuam eos maris sui custodiam adhibere vel adhibuisse unquam, nam victoriae navales, de quibus sumus locuti, non pertinent nisi ad solam occupationem, & ne id quidem, nisi bello iusto mari potiamur; vi enim iniusta si alios expellamus, non maris dicendi sumus domini, sed piratae.

Scio Julium Pacium *de Dominio maris Hadriatici* alioque, qui & ex professo & aliud agentes pro maritimo Venetorum imperio verba faciunt, praescriptionem longi temporis advocare, eique fulcro large inniti. Sed Hugo Grotius, & Vasquius Grotio repraesentatus *Cap. VII. Maris liberi*, docuerunt, longa possessione non quaeri marium dominia. Et quæ potest modus acquirendi, qui duntaxat est a Jure Civili, diversos Principes obligare? utitur etiam ea ratione Grotius, sed bene est, quod parcius, quis id ipsum rursus concessit *de Jure B. & P. Lib. II. C. 4.* & ita nunc vulgo placet, si adsint, quas ille persequitur, tacitae concessiones, indicia, praesumptiones aliaque adminicula, per quae ipsa magis, quam per longi tem-

temporis capionem extraneos excludi jus fasque esset. At vero, per me licet, excute quicquid est earum praesumptionum, & si quid conjecturis dandum, reperiēs Gentium animos adversus praescriptionem maris omnimodo militare & nihil reliqui facere, quominus voluntatem suam enixe declarent: testantur id acta Populorum publica, testatur quotidie suo quisque exemplo, dum, quod alius mare in dominium suum transcribit, alius eo vel invito ingrediatur & alterius possessionem, si quam praetendat, continua navigatione turbet. Quod non eo dictum velim, ut, si justa sit possessio, jute turbatum existimem, sed quo probem aliena hinc esse indicia, praesumptiones, conjecturas, quibus placuit praescriptionem dari inter distincta invicem Imperia. Quinimō si ex edicto Praetoris haec finienda essent, tantum abest ex nostra sententia, ut alicui Principi possessionem maris continuam, & quae ad praescriptionem satis est, largiamur, uti contra a nobis dictum & doctum sit, ne quidem hodie quemquam mare aliquod videri possidere, multo autem minus possedisse eo tempore, cujus non exstaret memoria: & tamen possessionem, longaevam adeo, illi ipsi desiderant, qui hoc iniquitatis praesidio potentioribus adulantur. Caeterum ne plura addam, Grotius & Valquius in causa sunt, namque hi maris ufucapionem submoverunt eis rationibus, quas meas facere non dubitem, si demas, quae ipsi ajunt de natura maris praescriptioni adversa, utpote re communi ex legibus Naturae & Gentium, & quae nec in bonis esse posset, nec possideri, nec quasi possideri, nec alienari, & caetera, de quibus non nihil dicam *Cap. ult.*

De Genuensibus eadem fere dicta sunt, cum pro eorum causa eadem fere dixerit Petrus Baptista Burgus libro *de Dominio Serenissimae Genuensis Reipublicae in mari*

Ligustico. Quam praeclare, etiam contra ipsos Venetos; rem gefferint pro imperio maris, loquuntur annales; sed mare Ligusticum, quod *suum* appellant, ac si libra essent mercati & aere, possideant, nec ne, videndum est. Et sane possidere videntur, si verum est, quod rerum Genuensium Scriptores narrant, ad tutelam maris Ligustici habere eos classem triremium perpetuam, qua Barbaros ex Africa, & quos placet, alios arceant, seque suasque insulas tueantur, res sic comparata ad exemplum Romanorum in toto Mediterraneo. Bonum factum! & nisi remiserit illa gnavitas & studium possidendi, fere est, ut Januenses maris Ligustici renunciem dominos, & mutem sententiam, qua nullum hodie mare imperio teneri dixeram. Sed illa triremium statio ubi & an semper excubet, refert plurimum, nam si in actis & portibus ea fervetur minus instructa, vereor, ut remiserit possidendi accuratio. Atque ita se nunc rem habere idoneis auctoribus intellexi; habent triremes, sed domi, non in Ligustico, caetera eas non armant, nisi e re publica esse videatur mare a vicinis Afris purgare, vel si quid his est simile. Sed nec aliter Veneti instituunt, nec Pontifex maximus, infestantibus mare piratis; neque tamen propterea velim maris audire dominos; non qualiscunque navigatio ad possessionem sufficit, nec qualiscunque possessio ad dominium; haec cur non sufficiat, satis & super ex praecedentibus intellectum est.

Cum vero ultra potestatem terrae maris imperium non extendatur, nisi occupatio & possessio accedat, facile dabitur, injuria Francorum Regem imperium sibi arrogare in mari Mediterraneo, quo de anno MDCLVII. inter Ludovicum XIV. nunc Franciae Regem, & foederati Belgii Ordines aliquid actum est; ille suum esse id mare, horum
lega-

legatus commune omnium adferebat. Sed constat, tantulum terrae, quantum ad mare Mediterraneum Franci possident, minime ei rei sufficere, neque tantum navium esse, quantum ei mari occupando & possidendo est satis, neque, si esset, profuturum in praejudicium aliorum, qui etiam latissime ad id mare possident, & ejus ex terra pro parte domini sunt.

C A P U T VII.

An qua maria pareant Belgis foederatis? in vasto Oceano nihil cuiquam esse juris, nisi propter continentem.

Non sum, qui mentiar in gratiam Gentis meae. Diu est, ex quo Belgae gloria navali praestiterunt, sed mare exterum possidere, vel animo domini possedisse unquam, non memini me legere. Quin tantum illis modestiae est, ut usu maris & fructu contenti, nec dominium sibi adsciscant, nec aliis invideant, qui sola nominum superbia delectantur. Maribus tamen fretisque proximis semper imperarunt; adque hunc modum Belgii olim Principes mari, quod vulgo *Australe* vocamus, dominati videntur, utpote quod circumjecto undiquaque in insulis & continente imperio complectebantur. Quam in rem notari potest Philippi Burgundi privilegium, quo anno MCCCCII 16. *Maji* Amsterdammensibus concessit aliquam pecuniam exigere ab his, qui per id mare adveniunt, Phari, huminum & indiciorum nomine, quae Amsterdammenses in eo mari habebant: quod deinde iis, quia contra Philippum II. Hispaniarum Regem arma ca-

pere nolebant, ademptum, Enchufanis suo & Philippi nomine Orangius Dynasta anno MDLXXIII. 9. *Febr.* dedit. quo de deinceps multum turbarum factum est. At cum postea excusso Regis Hispaniarum imperio Frisii, qui ab altero latere ejus maris dominantur, ipsi imperare coepissent, quaesitum est, an & ipsi in eam pecuniam tenerentur, & quum in arbitros compromissum esset, anno MDCL. 4. *Septembr.* absoluti sunt, nisi merces suas in Hollandiam vendendas adferrent. Notandum & Maximiliani, Caesaris Germanici, quod ut tutor Philippi Austrii anno MCCCXCII. 20. *Decembr.* Enchufanis dedit, privilegium, quo iis per milliare quadratum in mari territorium datum est, confessa eo usque juris dicendi facultate, quemadmodum in ipsa urbe Enchufana. Rectius, ni fallor, quam Caepolla, qui in toto Adria Venetis idem jus tribuit, quod in Civitate Venetiarum, libro *de Servit. praed. rust. Cap. XXVI.* sed de eo dictum est satis *Cap. proximo.*

Equidem proprie vis terrae dominium maris proximi definit, sed quia alia alia fortior est & latior, ἐν πλάτει & cum amplitudine aliqua illud acceptum constat. Sic utique accepit Maximilianus, sic & Augustus, cum Civitati Tarsensi simpliciter dedit ἐξουσίαν τῆς ποταμῶς ἔξ τῆς θαλάσσης τῆς κατ' αὐτὴν, ut Dion refert Chrysostomus *Orat. XXXIV.* Nec aliter intelligo, quod ait §. 4. *Tit. I. Consuetud. Middelburg.* esse videlicet Ballivii aquarum (qui dicitur) jurisdictionem ad usque ultimos Flandriae fines. Atque ea latitudo videtur placuisse ad expediendas argutias tricasque, quae de continentis imperio moveri poterant, sed aut fallor, aut magis ita res involvitur: quod enim alias sic satis est certum, si hujusmodi laxamentis indulgeas, protinus redditur incertissimum.

De maribus Mediterraneis haecenus loquuti sumus; liceat

ceat aliquid addere de vasto Oceano. Hunc non occu-
 pari, certe possideri non posse res est oppido manifesta:
 omnes quippe omnium Principum naves ei possidendo vix
 ac ne vix quidem suffecerint. Quin vel mare Atlanticum,
 magni Oceani exiguam partem, nemo hodie Princeps clas-
 sibus suis recte custodiverit. Quare nihil juris proprii in
 eo quisquam vindicare potest; vindicat tamen cum alias
 Oceani partes, tum Atlanticum Lusitana Gens, ut scire
 licet ex iis, quae dedit Seldenus *Lib. I. Maris cl. Cap.*
17. Et de Hispanis vulgo fertur, Oceani imperium sibi
 adscribere. Sane Hugo Grotius *Annal. Lib. XVI. p. m. 733.*
 Heemskerkium, Belgarum architalassum, loquentem in-
 ducit, ac si Oceani imperium in Regum suorum titulis
 Hispani jaçtarent, & Seldenus *d. Cap. 17.* eo refert, quod
 inter titulos Caroli Imp. V. legitur, *Koning van Castille, van*
Leon, van Grenade. van de eylanden en vaste landen, van de
Zee Oceaen &c. sed perperam, cum illud *van de Zee Oceaen*
 pertineat ad praecedentia, atque si scriptum esset, ut in
 Regum insequentium titulis scriptum est aliquando, *van*
de eylanden en vaste landen der Zee Oceaen. Prava est aliorum
 interpunctio, ut intelligimus ex Hispanicis, quae vulgo
 occurrunt: *Rey de las Islas, y terra firma del mar O-*
ceano. quin & in lingua, Belgarum vernacula; illud *van*
de Zee Oceaen aliquoties non interpunctum vidi. Arguunt
 haec, arguit & satis Vasquius *Controv. illustr. II. 89.*
§. 30. Hispaniarum Reges maris titulo abstinuisse, & Sel-
 denus postmodum in id pronior fuit. Heemskerkii oratio
 apud Grotium exaggerandae est Hispanorum superbiae,
 & quum id fieri soleat in procinctu, nihil inde probatur.

Sed qualiacunque haec sint, nihil quicquam ad nos,
 qui unice disputamus, Oceanum in nullius dominium
 transcribi posse, id enim cum nequeat praestare possessio,
 nihil

nihil praestiterit. Et quidem universum possidere non possumus, partem possumus, at quis ejus rei periculum fecit? Romani forte Brittannico, sed hos praeter nemo, ex quo Oceanus geminos interluit orbes. Loquor autem de Oceano, qui terris Principum vicinus subditusque non est, ubi non nisi pontus & aether, neque illud, quod in proximum mare competit, imperium. Hunc, inquam, Oceanum nemo unus possedit unquam; nec, ut possidere intelligantur, Castellanis quicquam prodest hic Hispania, illic America: tunc demum possessio utrimque mare subigit, cum ita utrimque possidetur, ut a terra in potestate contineri videatur posse, sicuti in angustis fretis accidit, & de Baltici maris freto dictum est, ut & de Byzantino & Herculeo, quorum potestate Romani dominabantur & Herculeo, quorum potestate Romani circumfuso ubique imperio ambiebant, & ne quid deesset, classium frequentia possidebant, & potentia tutabantur. Quare nec ultra columnas Herculis his ipsis Romanis quicquam juris erat, hoc est, nullum in Oceano imperium: unde de Romanis rerum dominis, seu, qui hos repraesentabat, Caesare Julio non Virgilius, non Jupiter aliquis, sed oraculum juris pronunciasse videtur: *Lib. I. Aeneid. vs. 291.*

Imperium Oceano, Famam qui terminat astris.

Et in eandem sententiam Marcus Acilius Glabrio ad milites apud Livium *Lib. XXXVI. C. 17. Quid deinde aberit, quin ab Gadibus ad mare rubrum Oceano fines terminemus?* utrobique Oceanus, quem ita per eminentiam dicimus, imperio excluditur. Certum equidem est apud auctores rei Romanae Oceanum non semel subditum proponi, at fere de Oceano Britannico, sive freto illo, quod Gallias & Britannias interest, verba fieri colligas ex locis, quos congeffit Seldenus *Lib. II. Maris cl. C. 4. Quin si*
quod

quod Poëtae vel Oratoris, aliter sentientis, testimonium adduci posset, non id probaret sine probata ipsius Oceani possessione.

Haec autem possessio cum nullius unquam Gentis fuerit, hodieve sit, satis est apertum, Oceanum nulli paruisse vel hodie parere domino, nisi his sui particulis, quae orbem terrarum proxime adluunt, & propter continentem in dominio sunt. Atque ea ratione nulla fere Gens est, quae non tantillum possidet, nam ex sententia Dionysii Afri, eaque vera,

---- Ὀκεανὸς περιέδραμε γαῖαν ἅπασαν.

reliqua nec possidetur, nec habetur dominio. Suaves sunt, qui contradicunt, Lusitani, & suavis, qui his contradixit, Hugo Grotius in *Mari libero*; illi quia strenue ineptiunt, hic ineptientes dum refellit, quia ad omne simpliciter mare transfert, quod duntaxat de Oceano dicere oportuerat & dixisse suffecerat. Non est opus longo molimine Quum ajo Oceanum Septentrionalem, Atlanticum, Aethiopicum; Indicum, exque his nullum a Lusitanis possideri, satis ajo, libera esse maria, quae Belgae erunt ad Indiam Eoam. Et vero constat, possessionem ab illis ne quidem per mendacium obtendi, nedum ut possideant, simulque constat, si subsistant, quae subsistere disputavimus, ex eo solo recte defendi libertatem quaquavorsum in Oceano navigandi ad Indos, & tuto nos carere Grotii rationibus, prolixè aliunde quaesitis; nec, ut videtur, usquequaque veris. cur ita videatur, dicet *Cap. ult.*

Explicitum est, qui hodie sibi maris dominium adscribant, & quam jure nullo. Sunt & alii, qui de eo gloriantur, sed Asiae tumores vel minorum in Europa Gentium fastus compescere non est tanti; abunde etiam iis refutandis est dictum. Nihil addo, quam sententiae no-

strae hanc conjectionem: Oceanus, quae patet, totus imperio subjici non potest, pars potest, possunt & maria mediterranea, quotquot sunt, omnia. Nullum tamen mare mediterraneum, neque ulla pars Oceaniditione alicujus Principis tenetur, nisi qua in continentis sit imperio. Pronunciamus MARE LIBERUM, quod non possidetur vel universum possideri nequit, CLAUSUM, quod post justam occupationem navi una pluribusve olim possessum fuit, &, si est in fatis, possidebitur posthac; nullum equidem nunc agnoscimus subditum, cum non sufficiat id affectasse, quin vel aliquando occupasse & possedisse, nisi etiamnum duret possessio, quae Gentium hodie est nullibi. ita libertatem & imperium, quae haut facile miscentur, una haec sede locamus.

C A P U T VIII.

*Testimonia, quibus maris imperium adfirmatur
De Gentibus, quae maris potitae sunt.*

Tantum opinio praejudicata potest, ut etiam sine ratione valeat ejus auctoritas: sic olim fuit, & sic etiam nunc vivitur; perperam tamen, si rem cernimus. Sunt loca Auctorum, Poëtarum quoque, ne quid deesse videatur, qui simpliciter vel ajunt vel negant, mare dominio subjici posse: his illisve nihil fere tribuo, quamvis ab antiquitate commendentur. Auctoritatem non defugio, si rationes expediantur, absque iis enim nihil quicquam facile movebit; qui aliter in animum inducit, ingenio suo utatur. Existimem autem, satis nos expedivisse rationes, quibus id, quod agimus, queat obtineri: fin
ta

tamen praeterea scire attinet, ubi Principibus, interque eos Romanis, imperium maris adscribatur, ea loca, ex Jurisprudencia etiã Hebraica, sedulo collegit Joannes Seldenus toto opere *de Mari clauso*, Petrus Baptista Burgus *de Dominio Genuensium in mari Ligustico*, Hugo Grotius *de Jure B. & P. Lib. II. C. 3. n. 13.* & in *addit. ibidem.* Jacobus Gothofredus *ad l. 9. ff. de L. Rhod. de jact. Cap. XII.* quæ si delecteris, addere potes Philonem Judæum variis locis in libro *de Legatione ad Ca-jum p. m. 829. 834. & 845.* Herodianum *Lib. II. C. 36. in Oratione Serveri:* Την δὲ γῆς καὶ θαλάττης τοσαύτην ἀρχὴν ὠνησάμενός τις ἀισχεῖσθαι, *tale autem terrae marisque imperium* (Romanum intelligit) *turpiter quis auctionatus* &c. iterum *eod. Lib. C. 38. . . . ἐν ὅπλοις Ἰταλιῶται πάντες ἦσαν,* καὶ γῆν καὶ θάλατταν ἐκτήσαντο, *in armis erant omnes Itali, terramque & mare obtinebant.* statim iis & tribuit πᾶν κλίμα ἑρᾶνθαι, *omnes caeli tractus*, quo ita nihil sit exceptum. Polybius quoque maris imperium aliquoties commemorat *Lib. I. Cap. 3. 7. 16. 20. 25. & 39.* non vacat loca describere, ut neque, quod in hanc sententiam habet Erinna Lesbia apud Stobaeum *λέγ. περὶ Αἰδογείας*; sed suavissimum est de Romanis Alphaei Mitylinaei epigramma *Lib. I. Ἀνθολογ. Cap. 5. n. 19.*

Κλαίει θεὸς μεγάλῳ πύλας ἀκμῆτας ὀλύμπῳ,

Φερεὶ ζεὺς ζαθέαν αἰθήρῳ ἀκρόπολιν:

Ἦδη γὰρ καὶ πόντῳ ὑπὲρζευκται δορὶ Ῥώμης

Καὶ χθῶν. ἐρᾶνθαι δ' οἴμῳ ἔτ' ἔς' ἄβυστον.

Geminum est Alcaeï Mersenii de Philippo *ibid. n. 17.*

Μακύνει τέχῃ, ζεῦ ὀλύμπιε, εἴξε Φίλιππον

Ἀμφατὰ, χαλκείας κλαίει πύλας μακάρων,

Καὶ γὰρ χθῶν καὶ πόντῳ ὑπὸ σκάπτροισι Φιλίππου

Δέδραται, λοιπὰ δ' ἀπὸς ὀλύμπου ὁδός.

Oratione versa pessime utrumque transtulit Florens Christianus, primum ita verti potest:

*Claude, Deus, magni portas sublimis Olympi,
Custodi-caelum, Jupiter, ipse tuum:
Namque mare & tellus Romano ducta triumpho,
Nunc supereft caeli Regia sola tui.*

alterum sic verto:

*Macyni muros potuit superare Philippus,
Claude fores caeli nunc, Deus alme, tui:
Ecce mare & terrae sceptro subiecta Philippi,
Ad tua jam tantum sydera restat iter.
Vide & aliud de Philippo ibid. num. ult.*

*Κοίραν Ὁ Εὐρώπας, ὃ καὶ εἰν ἀλὶ κατὰ χέρσιν,
Τόσων ἀναξ διατῶν, ζεὺς ὅσον ἀθανάτων. Ἔσθ.*

*Qui regit Europam, terris dominator & undis,
Non secus ac caelo Jupiter, imperitat. Ἔσθ.*

Sed ne a Romanis abeamus, eos fuisse undarum terraeque potentes, ut Domitianum Stat. Papinius *Theb. Lib. I. vers. 31.* alloquitur, passim Scriptorum locis consignatum est. Hinc Lucanus *Pharf. Lib. I. vers. 110.*

*Quae mare, quae terras, quae totum possidet Orbem,
Non cepit fortuna duos - - - - -*

Hinc Claudianus de *III. Consulatu Honorii*:

*Te tuus Oceanus natali gurgite lassum
Excipit, & notis Hispania proluit undis.*

& mox:

*Unanimi Fratres, quorum mare terraque fati
Debentur - - - - -*

Hinc etiam Inscriptio Thyatirena, quam Georgius Wheeler, doctissimus Anglus, dedit in *Graeciae Itinerario P. I. Lib. III. p. m. 213.* Imperatorem Romanum appellat Διοπότην γῆς καὶ θαλάσσης; habet autem se ita:

TON

ΤΟΝ ΤΗΣ ΚΑΙ ΘΑ
 ΔΑΣΣΗΣ ΔΕΣΠΟΤΗΝ
 ΑΥΤ. ΚΑΙΣ. ΑΥΡ. ΣΕΟΥΕΡΟΝ.
 ΑΝΤΟΝΕΙΝΟΝ ΠΑΡΘ. ΜΕ. ΒΠΙΤ. Μ.
 ΤΕΡΜ. ΜΕ. ΜΗΤΕΡΑ ΡΑΤΡΙΔΟΣ
 ΕΑΥΤΟΥ ΚΑΙ ΤΗ —
 ΠΟΔΕΟΣ ΕΥΕΡ —
 ΑΡΙΤΝΩΤΟΣ ΤΟ
 ΤΡΙΤΟΝ ΧΕΙΛΙ —
 ΟΙΕΡΕΥΣ ΤΟΥ Θ —
 ΚΑΙ ΝΕΩΚΟΡΟ —
 ΤΟΥ ΣΕΒ
 ΚΑΙ ΕΠΙΤΡΟΠΟΣ Σ —
 ΒΑΣ ΤΟΥ ΑΡΧΗΣ Α

Inscriptionem, quamvis mutilam, repraesentare placuit, cum quia monerem pro ΤΗΣ, ut nunc a principio legitur, vel typi vel marmoris vitio, legendum esse ΓΗΣ, tum quia ille γῆς ἢ θαλάσσης δεσπότης Antoninus est, ut Antoninus erat, qui se τῷ κόσμῳ κύριον esse profitebatur in lege, quam explicavimus, IX. ff. de lege Rhod. de jact.

Haud difficile esset adhuc alia adferre pro imperio maris, etiam magis proba, quam sunt nonnulla Seldeni, at cui bono, dicat Cassius? habet & mare liberum, quibus se tueatur, auctoritates, diversas diversis denunciavit Grotius; sed seu numeremus sententias; seu ponderemus, semper illi vincent, qui maris dominium agnoscunt. Non quod opiner, ea maria continuo subdita fuisse, de quibus, ut subditis, recitantur testimonia, sed quod, Oceanum si excipias, subjici potuerint. subdita vero fuerint, nec ne, occupationis & possessionis causa docuerit, ut haec affatim probavimus. Ex ea & porro discimus, quid censendum sit de vulgari illo dicto Dionysii Halicarnas-

fensis, ubi populum Romanum ait πάσης κρατεῖν θαλάσσης, ἔ μόνον τῆς ἐντος Ἑρακλείων στήλων, ἀλλὰ καὶ τῆς Ὠκεανίτιδος, ὅση πλεῖσθαι μὴ ἀδύνατός ἐστι, *maris imperium habere*, non ejus duntaxat, quod intra Herculis columnas est, sed καὶ Ὀκεανί, in quantum navigatur. Est id falsum de Oceano, qua navigatur vel tunc navigatum est, nunquam Romani tam late possederunt, quin extra columnas Herculis nihil quicquam, praeter mare Brittanicum, intra columnas autem totum Mediterraneum, sic *Oceano terminantes imperium*, ut melius & verius dixerunt Romani, quorum meminimus *Cap. VII.* immo ne quidem ipsum Mediterraneum possederunt semper, atque adeo ejus nec semper domini. Simus memores ejus, quod modo retulimus de classium excubiis tam in illo, quam Britannico, & habeamus persuasum, Romanos eo, neque alio tempore, mari ultra continentem fuisse dominatos, & denique secundum haec accipiamus testimonia, quae de maritimo Romanorum imperio occurrunt: alioquin, sin hoc fieri nequeat, profecta credamus vel ab ignorantia, vel superbia, vel, quae Poëtarum maxime propria est, adulatione.

In exemplis Gentium, quae maris potitae sunt, constat plus esse ponderis: nam si vincatur, mare a nonnullis rite occupatum, rite possessum esse, de dominio ejus non est quod amplius dubitemus. Et quidem Castor Rhodius primus perhibetur fuisse, qui scripsit περὶ θαλασσοκρατούντων: ex quo opere sunt, qui ajunt Eusebium depromis-
 sisse, quae in *Chronico* memorat de his, qui per varias mundi aetates imperium maris obtinuerunt. Seriem Eusebii exhibet fere Seldenus *Lib. I. Mar. cl. C. 10.* recensens ordine maris dominos Cretenses, Lydos, Pelasgos, Thraces, Rhodios, Phryges, Cyprios, Phoenices, Aegy-

gyptios, Milesios, Cares, Lesbios, Phocaeenses, Corinthios, Jönes, Naxios, Eretrienfes & Aeginetas. De Cretenfium imperio maritimo plura habet Meurfius in *Creta Lib. III. C. 3.* de Cypriorum in *Cypro Lib. II. C. 23.* de Rhodiorum in *Rhodo Lib. I. C. 17.* Exinde Seldenus *eod. Lib. C. XI. XII. & feqq.* Lacedaemoniorum, Athenienfium, aliorumque exercita mari imperia percenfet, teftantibus id prifci aevi auctoribus. De Lacedaemoniis addi poteft, quod refert Plutarchus *Apophtegm. Lacon. p. m. 414.* & *de Animi tranquillit. p. m. 254. & 264.* fed quid opus eft quicquam addere, cum Seldenus Burgufque per mille currant exempla & auctoritates, quibus ex omni memoria confirmatum eunt dominium maris penes Graecos Romanofque. recentioris aevi exempla nec moror, nec Burgum, late ea depraedificantem, audio. Satis nobis effe negotii videtur cum ipsis Romanis, quos mari aliquando perfecte imperaffe probavimus, utique fatis cum Graecis, fi vocabulum θαλασσοκρατεῖν, quo Scriptores Graeci plerumque utuntur in rebus cum fuis tum Romanorum tradendis, non fignificet *maris obtinere imperium*, fed duntaxat *praeflare copijs navalibus, mari potentiffimum effe.* ita contra vulgum difputat Cafaubonus ad *Lib. I. Polybii p. 209.* Et fane verum eft, θαλασσοκρατεῖν quandoque non aliud effe quam ναυακρατεῖν, *praeflare navibus*, nec tamen minus verum, eam vocem faepius ufurpari ad denotandum maris imperium, ut optimum maximum eft vel effe poteft. Hujus rei argumentum eft in pactis & foederibus, quibus θαλασσοκρατήσαντες ex formula imperii vetabant huc vel illuc navigare, hac vel illa navi, & quae reliqua funt perfecti dominii indicia: pacta ejufmodi & foedera Grotio, Seldeno, Burgo certatim dicta funt. Accedit, quod verbum θαλασσοκρατεῖν, ut ut vulgare in hoc argumento, non ta-

men

men semper frequentetur, aliquando ἄρχειν τῆς θαλάσσης, κυριεύειν τῆς θαλάσσης, κύριον γίνεσθαι τῆς ἀρχῆς τῆς κατὰ θάλασσαν, & quae similia observavi, unice arguendo maris imperio idonea. Denique Romani Romane loquentes & suum & aliorum ante ipsos in mari imperium non semel rotunde adeo expresserunt, ut ex vocabulo ambiguae apud Graecos significationis haec subvertere sit nefas.

Caeterum de his Gentium exemplis ita habeto: ἕτερά πάντα, ἕτερά πάντοτε, ἕτερά παρὰ πάντων. Verosimile est, imo verum, quibusdam populis adscriptum esse maris dominium, qui illud vel nunquam, vel non tam diu, quam vulgo fertur, obtinerunt. Saepe creditum est, potentiam navalem a dominio maris non differre, atque adeo nec latrones maritimos a maris dominis: quare habiti sunt aliquando κύριοι τῆς θαλάσσης, qui ne quidem mare occupant, hoc est, animo sibi habendi erant ingressi, vel qui non iuste occupant, sed vi majori turbatis depulsi ve aliis. Rursus, sola occupatio, sine possessione continua, & olim & nunc etiam magnis Viris credita est sufficere ad maris imperium adferendum, vel possessionem si desiderent, solo eam animo solove corpore tutantur. Hinc tam spissa testimonia, quae pro captu quisque suo depromsit. Neque tamen licet ea temere falsi postulare, cum in tanta obscuritate veteris aevi nesciamus, Creteneses, Lydi, Pelasgi & qui deinceps memorantur, mare revera possederint eo tempore, quo ipsis dominium tribuitur, nec ne. Scimus Romanos vere possedisse ac jure suo habuisse mare Mediterraneum & Britannicum, sed ecquando praecise possidere coeperint, possessionemve remiserint, nemo facile dixerit, neque adeo praecise vindicaverit vel refutaverit, qui cum Cassandra apud Lycophronem iis occi-

Γῆς καὶ θαλάσσης σχῆπτρα καὶ μοναρχίαν.

quaestioejus rei vertitur in facto. Id autem, quemadmodum nos saepe latet in historia temporis antiqui, sic non est, ut aetate nostra aliquod maris exteri dominium nobis obtrudi patiamur, utpote quibus palam constat, nullum hodie mare ab ullo possideri, certe pro possessione habendum non esse, quod ad instar ejus nonnullis fingere placuit.

C A P U T IX.

*In jure Naturae vel Gentium nihil esse, quod ob-
stet dominio maris; nihil etiam in jure Romano.*

NE cum turba nobis res sit, maris liberi patronum feligemus, & quem potius quam Hugonem Grotium? is in libello singulari, quem de libertate maris scripsit, simpliciter contendit, mare dominio subjici non posse, nullae ibi ambages, nullae tricae. Nonnihil tamen mutatus ab illo in opere *de jure B. & P. Lib. II. C. 3. §. 8.* largitur, mare occupari posse ab his, qui terras ad latus utrumque possident, dummodo non ita magna sit pars maris, ut non cum terris comparata portio earum videri possit. Sed quis illam portionem definiverit? sunt haec incerta, & forte ἀπορα, nisi redigantur ad regulas, quas de mari terris proximo tradidimus *Cap. II.* Item ille §. 13. maris exteri quoque partem occupari posse concedit maritimo exercitu, qui classe constat, sed partem duntaxat, & id non ut proprietas quaeratur, at sine proprietate imperium. Equidem non video, cur, si exigua maris pars classe exigua queat occupari, cur, in-

quam, major pars non possit occupari classe majori, atque ita pluribus classibus vel totum mare Mediterraneum. eadem sane juris ratio, quae illud suasit extorsitve, etiam hoc comprobatur. Quod autem maris imperium a proprietate distinctum introducat Grotius, eo jure nititur, quod sibi quisque homo constituit, alieno certe ab hoc, quod occupantibus larga manu datum est a Natura, receptum a Gentibus, confirmatum a Jure Civili. notavimus ea de re aliquid *C. IV.* Videbatur e re sua imperium aliquod admittere, ut in hunc ordinem cogeret Veterum sibi adversa testimonia, quamvis inter ea sint, quae verum maris dominium luculenter satis exprimunt. Negat vero proprietatem, ut defendat principia sua, quae *eod. Lib. C. 2. & Mar. Liber. C. V.* de communione maris exhibuerat, salva enim hac maris imperium aliquatenus salvum videri poterat, proprietas non poterat.

Atque illa principia ipse, ut par est, repetit a ratione naturali, nam Jus Civile cujusunque tandem Gentis nihil hic efficit. Mare, inquit, ad quemvis usum omnibus sufficit, ad aquam hauriendam, ad piscatum, ad navigationem; necessitas autem rerum dominia distinxit, cum una res cunctos exhibere non possit: igitur omnia censenda sunt in pristina communione mansisse, quae ita comparata constat, ut semper usum sui praebere possint omnibus, cessante tunc causa, ob quam a communione discessum est. Sed verum non est, jus occupandi a sola necessitate promanasse; utilitas, utilitas, justi prope mater & aequi, & heic vocanda est in partes. Necessitas occupationem imperabat, utilitas suadebat: ut ita quisque secundum Naturae regulam occupasse videatur, quod sibi & necessarium erat & utile. Utilitatis vero non una est species: res communis promiscuo usu fere inutilis reddi potest, ut
saepe

saepe accidit in mari piscationibus exhausto; quin si res communis utilitatem omnibus praeslet perpetuam, praestabit tamen majorem, si propria est. Si mihi soli, verbi gratia, in hoc illove mari piscari datum sit, magis utique erit utile, quam si inter caeteros, & illa major utilitas, ut nunquam non expetitur, sic & haberi potuit occupato mari. Quemque commodi sui vel maxime satagere *ex primis*, quae dicuntur, *naturalibus Cap. I.* eduximus; illa persuadent, recte nos fieri locupletiores cum alterius detrimento, dummodo ne cum alterius injuria.

Denuo Grotius: At vero mare occupari nequit, utpote res non terminata, & sine termino quis dominium statuerit? non dicam, quae dixit in hanc rem Welwod *de Dominio Maris Cap. I.* Strauchius *de imperio Maris Cap. II.* & praecipue Seldenus *Lib. I. Maris cl. Cap. 22.* sed hoc velim observari, eundem ex sententia nostra esse domini terminum, qui possessionis. Possessionis terminus quis esse videatur in partibus terrae proximis supra vidimus, certus sane & definitus undiquaque; quis autem sit in partibus exteris minus dubitari potest, dum hunc indicat naturalis detentio & illa, quae per excubias navaleis fit, incubatio perpetua, seu, quae vicem ejus obtinet, non interrupta navigatio per has, quas occupavimus, maris partes. Sed frustra sumus, si nec mare, ut ipse ait, possideri queat propter fluxum ejus & instabilem naturam. Nodus in scirpo! corporalia possideri posse auctor est Paulus in *l. 3. pr. ff. de acq. vel amitt. possess.* & est omnino mare inter ea, quae tangere vel tangi possunt. Quin ipse admittit, maris partem occupari posse, cum tamen nulla occupatio sine arrepta possessione procedat, & eadem, quae in partibus, etiam in toto sit juris ratio. Non igitur ferenda sunt, quae auctore Grotio nunc vulgo cir-

cumferuntur de natura maris varia & mutabili semper: nam ea propter si dominium refutare decretum sit, rerum nostrarum bona pars cito eheu! nobis peribit. Et de fluminibus quid dicemus? ea in bonis populi esse facile dabit Grotius, nec minus facile, cursu haec celerrimo agitari ferrique, imo vel pleraque maria eo nomine post se relinquere. Denique littorum eadem est, quae maris, causa, si Jctos Romanos audias, ad quos ipse Grotius provocat; communia igitur? esto, statim videbimus. At quare? quod in dominium redigi nequeant? ἀόριστα forte & sine termino, ut mare? nemo dicit. an quod possessionis capacia non sint? obstante scilicet eorum natura fluxa quoque & vaga? nec Grotius hanc rationem in littoribus probaverit. Aliam nos dabimus, quae ipsa & mari conveniet, nec tamen occupationi possessionive erit impedimento. Rogo interea rationes illae facefsant, ut & aliae, quas, ceu ex naturali Jure, pro mari libero adferre placet de commerciorum libertate, de facultate transeundi per mare cuiusvis licita, & quae alia sunt sequioris notae. Sed vero miror, cur non eodem acumine etiam terram dominio subijci posse negent, vel sane iter, viam, actum sine pactis & stipulationibus per fundos omnes omnibus permittant, ita quippe, abolitis tributis & vectigalibus, commerciorum libertas pateret latius latiusque, vel, ut verius dicam, ad simulacrum pristinae communionis res ocysus esset composita. Haec visum est addere iis, quae longe lateque declamavit Seldenus *Lib. I. Maris cl. Cap. 20. 21. & 22.*

Proximum est, ut videamus de Gentium Jure; nec de eo est etiam, quod laboremus. Ratio hic familiam ducit, & tantum abest, ut haec principiis nostris quicquam adversetur, uti contra non aliud sit, quod me magis moveat.

veat. quanto nobis haec sit praesidio, satis puto me absolvisse. Populorum autem consensum ab origine rerum, quam a majoribus accepimus, ad haec usque tempora perpetuum & constantem adeo nobis passim suggessit exprefitque vel unus Seldenus, ut verbum non amplius addam.

Succedat Jus Romanum. Ejus auctoritas, fateor, non deciderit, quae Juris Gentium sunt; sed ecquis hominum neget, semper valuisse, hodieque plurimum valere testimonia eorum, qui Juris publici privatiue consulti veram Philosophiam scriptis dictisque consignarunt? absit, ut nos, qui Jurisprudentiam profitemur, Auctores nostros cum Welwodo traducamus, velut *Jus naturale ignorantes*, vel cum Seldeno, velut *oscitanter tradentes*, non solum quae receptissimis Gentium per omnia fere secula moribus, sed etiam, quae invicem sibi adversantur. Eorum memoria semper nobis fuit, eritque, donec nos erimus, sancta; sed Angli illi dum non adsequuntur, quae nostri ajunt de communione maris, acerbius, ut fit, exagitant. Videamus, seu potius perstringamus quaeque, neque enim nobis sedet,

Juris in Oceanum plenis descendere velis,

Sive aliis trita turpiter ire via.

Est autem verissimum, Jus Romanum, cum rerum divisionem & qualitatem exsequitur, maris communionem identidem ingeminare, & in eo illustrando saepe totum esse. Ita *Institutiones*, ita Marcianus in l. 2. §. I. ff. de *Rer. divis. Naturali Jure*, inquit, *omnium communia sunt illa: aër, aqua posluens & mare, & per hoc littora maris*. Mox idem in l. 4. pr. eod. de villis, & aedificiis, & monumentis, *quia non sunt Juris Gentium, sicut & mare*. Gemina sunt, quae de communione maris dixit Celsus in l. 3. §. 1. ff. *Ne quid in loc. pub.* &, qui

Seldeno maxime crucem figit, Ulpianus in *l. 13. ff. Commun. praedior. & l. 13. §. ult. ff. de Injur.* Sunt & alia in eandem sententiam, etiam apud Juris Graeci consultos, quae tamen nec conquiro, nec describo.

Interpretes, qui pro ingenio suo aliquod maris dominium agnoscunt, offendas hic incertos, quo se consilio sint expedituri. Alii mare, cum *commune* dicitur, ita hoc accipi volunt, quasi commune sit Civium Romanorum; alii usum maris communem admittunt, nec minus imperium alicujus populi; alii mare esse quidem commune, sed quemadmodum Marcianus ait, *Jure naturali*, quo vel terram communem esse haud difficulter concedunt; alii JCtos veteres recte pronunciasse, at mores Gentium, & ipsius Populi Romani, sensim subegisse subtilitatem juris; alii illorum auctoritates despiciere; alii sibi non liquere. Habent & leges rationesque, quibus, ita ut credant, ab animo suo impetrasse ferunt, sed has adscribere, & quâ abusi sint, edocere coepta vetat brevitâs. Nos existimamus, mare non aliam ob rem a JCtis nostris vocari *commune*, quam quod illorum aevo maxima sui parte occupatum possessumve non erat, imo forte nulla, si exterum spectes. Quod cum sit, ut esse mox dicam, rectissime illi: mare omnium hominum commune esse, natura omnibus patere, Jure naturali piscationem esse liberam, & quae alia sunt in eundem sensum: etenim in mari nunquam occupato durat, & in occupato ante, sed post possideri desito redit illa naturae regula, *occupanti cedere*, ut haec supra monui. Nec interest, me interprete, utrum mare dicatur *commune* & κοινὸν πάντων ἀνθρώπων, an vero in medio positum esse primum occupanti; apparebit hoc, postquam dispexerimus, qua significatione Auctores nostri *maris* vocabulum efferre consueverint.

Et

Et quidem dubitari videtur non posse, quin *maris* appellatio & ad Oceanum pertineat, & vel maxime ad Oceanum, si non sit, quod addatur; apud Graecos Latinosque id venit usu, cum *mare* dicunt, & rem vastam atque infinitam intelligunt. Solum Catullum audiamus, non ut nequitiae, sed ut rei Latinae magistrum, is *Epigr. in Formianum de mentula*:

Mentula habet instar triginta iugera prati,

Quadraginta arvi, CAETERA SUNT MARIA.

Quur non divitiis Croesum superare potis sit,

Uno qui saltu tot moda possideat?

Prata, arva, ingentis silvas, saltusque, paludesque

Usque ad Hyperboreos & MARE AD OCEANUM.

Ita & πόντος apud Callimachum in versu, quem annotavit Isaacus Vossius ad illo Catulli p. 342. Sane quum Oceanus omnia maria interna magnitudine sua immensum superet, quum omnes fere omnium Principum terras ambiat, & ut verbo dicam, quum κατ' ἑξοχὴν sit mare, non est, cur eum a veterum Ictorum mente secludamus. Oceanus autem ille, ut jam sumus edocti, nec a Romanis, nec ab aliis fuit occupatus unquam; unam tantae molis particulam Romani tenuerunt classe Britannica, sed nescio, an post Principem Trajanum ejus classis ulla quoque fiat mentio, quiu nec fortasse sub eo: Priscus equidem Javolenus, qui tum vixit scripsitque, in l. 46. ff. ad SCtum Trebell. meminit archiguberni cujusdam ex classe Britannica, at ex facto, quod an sua, an Majorum memoria acciderit, incertum. Utque ita nec de Britannico freto ausim affirmare, Romanam classem id infedisae aevo Ictorum nostrorum, eorum certe, qui, ut plerique, post Trajanum vixere; & fac infederit, καθόλα tamen Oceanus recte dicetur *communis*, potissima quippe ac fere omni

ni sui parte non possessus. Fuit igitur communis, estque adhuc, & erit deinceps, donec sit, qui eum occupare navibus poterit suis, & quemadmodum de universo nemo id exspectet, ita de partibus quominus exspectari possit nulla est ratio.

Sin vero credamus, Auctores nostros, cum de mari loquuntur, Mediterraneum intelligere, ut quod ipsis erat proximum, continuo suspicabimur, illa tempestate jam remisisse sollicitam ejus maris custodiam, quam olim quaterna classe servabant Romani. Et, ut verum fatear, de classibus eorum in mari Mediterraneo perpetuis non memini me quicquam reperire apud rerum Romanarum Scriptores, Jctis nostris aequales, utique aequales Marciano & Ulpiano, qui illud de communione maris benedictum toties nobis prodiderunt, neque etiam apud posteriores de eo tempore id traditum recordor. Classes frumentarias in hunc censum non refero, siquidem alia fini navigarint, quam possidendo mari. Sub Valente tamen in *l. un. C. de Classic.* memoratur classis Seleucena ad auxilium purgandi Orontis, sed nunquid a fordibus, an a latrunculis maritimis? in hoc proclivior sum. At vero de classibus maritimis nobis sermo est, non de fluvialibus, flumina nostri non dixerunt communia, sed mare; ad haec, cum possessio sit facti, probandum esset, classem illam prope Seleuciam non tantum sub Valente excubasse, verum & sub Principibus, quorum aetate nostri de jure responderunt; & vel sic, quamvis maritima classis esset, una unius maris tuitio non prohiberet, quominus mare ἐπὶ τὸ πλεῖστον diceretur commune. Nomine quidem tenus dominium maris ab Romanis jactatum fuit aliquamdiu post amissam maris possessionem, sed Jcti nostri, ubi id agunt, non adultores se, at Justitiae sacerdotes praestant:

stant: bene scilicet gnari, possessionem Oceani nullam esse, & maris Mediterranei sua jam aetate remissam. Illorum exemplo nos, probe etiam gnari, nullum nunc a quoquam possideri, mare hodieque liberum vocamus & commune.

Sic satis constat ratio ejus, quod JCti Romani ajunt de communione maris, & simul constat, perperam id ita accipi, ac si mare omnino non posset fieri proprium: plane enim eos aliter sapuisse vario argumento defendi potest. De dominio Romanorum maritimo, qua publico, qua privato, etiam ex Libris nostris, multa conquistavit Solde-
nus *Lib. I. Mar. cl. C. 24. § 25.* quae non repeto; nec opus est de eo amplius cavillari, cum adeo rotundum sit, quod scribit Paulus in *l. 14. ff. de Injur. Sane*, inquit, si
MARIS PROPRIUM JUS AD ALIQUEM PERTINEAT, *uti possidetis interdictum ei competit, si prohibeatur jus suum exercere: quoniam ad privatam jam causam pertinet, non ad publicam haec res.* Etiam Grotio is locus expref-
sit confessionem de proprietate maris, qua occupari potest & occupatum est. Rectissime, si non exciperet de ne-
scio quibus maris particulis, quas occupationis duntaxat esse capaces sine populi suffragio decernit, & si non promiscue adderet, in mari occupato usum tamen publicum impediendum non esse. utrumque, quamvis *αὐτὸς ἔφα*, mihi nequit probari, cur non illud, supra exposui, & hoc quatenus verum sit vel esse videatur, incontinenti exponam. Interea liquet, jus proprium maris quaeri posse, neque adeo mare dici *commune*, quam cujus domi-
nium quaesitum non est. Quaeritur autem dominium iis, quos ostendimus, modis, idque vela populo vel a privato, ut si a populo mare occupetur, ad Rempublicam pertineat, si a privato, ad privatum. Unde si privatus, ver-

bi causa, partem maris aedificio suo occupet, ejus erit dominus *l. pen. ff. de Rer. divis.* non secus ac Lucullus ejus maris nactus est dominium, quod apud Neapolim ad villam suam admisisse vulgo est notum. Si populus occupet, mare erit publicum *d. l. pen. de utraque occupatione rem confecimus Cap. II. § III.*

Atque ita hanc doctrinam esse constituendam clarebit exemplo littorum, quorum eadem, quae maris, causa est, ut diximus, & dicit *l. 2. §. 1. ff. de Rer. divis.* & consentiunt aliae. Littora igitur sunt communia, vel, quod idem est, publica Jure Gentium, non publica Jure Civitatis, non in patrimonio populi, ut docet Neratius in *l. 14 pr. ff. de Acquir. rer. domin.* sed hoc non prohibere, quominus dominio subjiciantur, idem *eod. loc.* observat his verbis: *Nec dissimilis conditio eorum est, atque piscium & ferarum, quae simul atque adprehensae sunt, sine dubio ejus, in cujus potestatem pervenerunt, domini fiunt.* Quapropter si quod littus occupem, meum erit, cum alioquin, ex regula Juris, meum esse non possit, quod in littore aedifico, & tamen utrumque mihi praestat certa Juris ratio, & auctoritas in *d. l. 14. pr. §. 1. l. 6. pr. ff. de rer. divis.* Quemadmodum vero privatus occupatione sibi subjicit littora, ita non est, cur populus eadem ratione subjicere nequeat. Exemplum sit in Populo Romano, qui mihi videtur ea littora occupasse, in quae colonos ad tuendas imperii oras misit, ut auctor est Siculus Flaccus: haec enim, & si qua praeter haec alia ratione occupata erant & possessa, non dubitem appellare littora, in quae Populus Romanus imperium habuit, & quae propterea *Populi Romani esse* aperte scribit Celsus in *l. 3. pr. ff. Ne quid in loc. publ.* Celsus ille, in cujus sententia pervertenda tantum, qui dissentiunt, operae posuere.

Quod

Quod autem veteres Prudentia littora vocarint *communia*, non alia causa mihi factum videtur, quam quod maximam artem occupata non essent, τὸ γὰρ ἀπαξ ἢ δις παραλαίῃσι οἱ νομοθέται, inquit alicubi ex Theophrasto Paulus noster. ne dicam, praeteriisse non esse censendos, qui de imperio littorum & dominio id tradidere, quod retulimus & referemus adhuc. Caeterum quod pleraque littora dixerim fuisse communia & Romanis non occupata, neminem offendet, qui animum ad amplitudinem Imperii Romani adverterit, & sciverit, haec maris limina fere esse sterilia, & quae occupasse non erat tanti. *littus arare* quid sit, nemo nescit unus. Hae tandem de communione littorum observatio si ad mare transferatur, confirmabit id, quod modo dicebam, mare commune esse & audire, qui aevo illorum, qui haec nobis suggerunt, subditum non fuit: non nihil tamen ex eo vel tunc subditum fuisse, & publicum Populi Romani non negabit, qui partes terrae proximas & possideri semper, & per hoc dominio teneri haud invitus concedet. Loquor de terra, quae ipsa subdita est, cum satis sit certum, nihil juris proprii in quemquam transire posse virtute littorum, quae ipsa adhuc communia, id est, in potestatem redacta non sunt.

Si quod ergo mare vel littus a Populo Romano occupatum sit, apparet hoc ejus Populi esse, eoque non aliter fluminibus, ita in viis publicis obtinere Ulpianus ait in l. 24. pr. ff. de Damn. infect. & passim in hanc rem sunt Titt. Pandectarum, *Ne quid in loco publico vel itinere fiat; De via publica, & si quid in ea factum esse dicatur? De fluminibus, ne quid in flumine publico, ripae ejus fiat, quo pejus navigetur, & aliquot sequentes.* estque id perpetuo servandum in iis, quae usu Civitatis pu-

blica sunt, ut alter alteri non noceat. *Quamvis*, inquit Pomponius in *l. 50. ff. de Acq. rer. domin. quod in littore publico vel in mari exstruxerimus*, nostrum fiat, tamen decretum Praetoris adhibendum est, ut id facere liceat, imo etiam manu prohibendus est, SI CUM INCOMMODO CAETERORUM ID FACIAT. Non Praetoris, sed Principis legendum esse miror in mentem venisse Bachovio ad *Πρώτα FF. in l. 5. de R. D.* & miror quoque inventos, qui id probent. sed hoc jam non agimus. Id agi constat, in littore vel mari, quod Populi Romani est, Praetoris partes esse cognoscere, si citra incommodum publicum recte aedificetur, palam quippe loquitur Pomponius de re publica, non de re communi, ut Grotius putabat *Cap. XIII. Maris lib.* in publico cavendum est, ne quid singulis obstet, caeteroquin si usus publicus impediret; sique deterior foret litoris marisve usus, etiam manu prohibendum esset *d. l. 50. l. 3. §. 1. l. 4. ff. Ne quid in loc. publ.* Proinde qui usui publico officit in re publica, qui me vetat piscari vel everriculum ducere in mari, quod est Civitatis meae, rursus Pomponius, imo plerique perhibent, esse huic similem eum, qui in publicum lavare, vel in cavea publica sedere, vel in quo alio loco agere, sedere, conversari non patiatur, aut si quis re mea, id est, cujuslibet e populo, uti me non permittat; nam & hic injuriarum conveniri potest, uti commemorat Ulpianus in *l. 13. §. ult. ff. de Injur.* suo haec testimonio luculenter prosequens in *l. 2. §. 9. ff. Ne quid in loc. pub.* Si quis, inquit ibi in mari piscari aut navigare prohibeatur, non habebit interdictum, quemadmodum nec is, qui in campo publico ludere, vel in publico balneo lavare, aut in theatro spectare arceatur. Sed omnibus his casibus injuriarum actione utendum est. Quin nec ei denegabitur ea actio, qui

qui ante aedes meas vel ante praetorium meum piscaria me fuerit prohibitus *d. l. 13. §. ult. de Injur.* nam in publico quum versetur, recte notat Ulpianus, *nullo jure usurpari*, ut liceat eum arcere a mari proximo, a re Civitatis publica. Neque tamen haec in caussa sunt, quominus qui Civitati praesunt illud, cui imperant, mare ex jure dominii elocent, & quominus conductor interdictum sit dandum, siquidem *vis ei prohibenda est, quominus conductione sua fruatur*, quemadmodum ex sua & veterum sententia haec enarrat idem Ulpianus in *d. §. ult.*

Ex quibus intelligimus, id, quod de non impediendo usu publico professi sunt Auctores nostri, non pertinere vel ad Civitates vel ad privatos, quibus jus proprium maris vel littoris occupati competit, sed duntaxat ad eos, quos re publica, tanquam publica, uti decet, non abuti, ut privata. Ita lacu, qui dominii mei est, alios piscari utique prohibere possum *d. l. 13. in fin.* possum & in mari, cujus jus proprium ad me pertinet, & si quis jus meum exercere me non sinat, ecce paratum est, interdictum *Uti possidetis*, quod, ut ad privatas causas accommodatum est, ita & haec causam meam tuebitur *l. 14. ff. eod.* In mare, quod Populi Romani est, molem mihi projicere non licet, si cui forte haec res nocitura sit *l. 2. §. 8. ff. Ne quid in loc. publ.* nec vel quicquam facere in eo, in-ve littore, quo portus, statio, iterve navigio deterius sit *l. 1. §. 17. ff. de Flumin.* in mari privato licebit procul dubio, & vel ita illud jactis in altum molibus operire, ut contracta pisces aequora sentiant. De re sua ut quisque statuerit, ita jus esto, atque adeo si mihi placuerit eo alio-ve modo statuere de re mea, statuo citra alicujus injuriam, &, ut dixi, Praetor Romanus interdictis suis mihi praesto est.

Sed ne longius abeam, quaestionem Juris Romani de dominio maris absolvamus ea animadversione, quam attigimus *Cap. I.* nimirum etiam eo jure verum esse, possessionem littorum, atque ita maris, dominium unice dare, unice defendere, adeoque ubi possessio praesens non est, neque jus domini esse secundum ea, quae hactenus disputavimus. Exemplo casae in littore extructae, & post dirutae illustrat hoc *l. 5. §. 1. & l. 6. pr. ff. de Rer. divis.* nec aliter de aedificio *l. 14. §. 1. ff. de Acq. rer. domin.* puta locum, quem diruto aedificio possidere definimus, ad causam pristinam reverti, perindeque publicum esse, ac si in eo nunquam aedificatum fuisset, *ἐκαταπέσει τὸ κτιδὲν, πάλιν κοινὸς δ' αἰγιαλὸς γίνεται*, inquiunt Basilici *Lib. L. Tit. I.* recte, ut *publicum* veterent, in *d. §. 1.* usi vocabulo *κοινῷ*. hoc enim ibi est *publicum*, non *δημόσιον* vel *πύβλιον*. Papinianus quoque, ut omnia dicam, ad hunc modum nos erudit in *l. 45. ff. de Usurp. & usucap. Praescriptio*, inquit, *longae possessionis ad obtinenda loca Juris Gentium publica concedi non solet, quod ita procedit: si quis aedificio funditus diruto, quod in littore posuerat, aut dereliquerat aedificium, alterius postea eodem loco exstructo occupantis datam exceptionem opponat.* Sic vulgo legitur & interpungitur, sed constat nonnihil turbatum esse, restituendum forte, si ita legas interpungasque: *si quis aedificio funditus diruto, quod in littore posuerat ac dereliquerat, aedificio alterius postea eodem loco exstructo occupanti datam exceptionem opponat.* Cujacius in *Comment. ad h. l.* legit etiam *occupanti & aedificio*, at utrumque ante Cujacium Editiones habuere, & vel Roberti Stephani Pariensis anni MDCXXXVII. caetera ipse aliisque non satis videntur adsecuti. Id autem agit Papinianus, ut loca communia vel, quod ille ait & tantundem est, Juris Gen-

Gentium publica non quaeri probet praescriptione, utpote, si recte interpretamur, supervacanea: nam simulac quis ea occupavit, continuo sua facit ex eodem Jure Gentium, in Jus Civile transcripto. Bino id exemplo edisserit; alterum, quod repraesentavimus, eum defendit, qui in littore aedificium exstruit eo loco, quo alius extruxerat, sed diruerat, tribuens *occupanti datam exceptionem*, hoc est, defensionem, quae jure occupationis datur ad tuendum possessorem in dominio Jure Gentium quaesito; alterum est: *vel si quis, quod in fluminis publici diverticulo solus pluribus annis piscatus sit, alterum eodem jure uti prohibeat*. Ex eo, quod primum proposuerat, apparet agi de eo, qui in piscatione non est, & alium, sed nullo jure, submotum vult: periit ejus possessio, periit ejus jus, & patet cunctis piscatio. Contra vero in *l. 7. ff. de divers. temp. praescript.* quae in primis solet committi cum *d. l. 45.* agitur de eo, qui reapse adhuc in piscatione est, & alium eo Jure uti prohibet, & recte, quia ejus, utpote possidentis, melior est conditio. Animadverterunt id modo Interpretes vetusti, & ex recentioribus Duarenus, Cujacius, Donellus, Grotius.

Haec sunt, quae DE DOMINIO MARIS indicare potius, quam commentari visum fuit. Singularis, qua utimur, sententia, ubertas argumenti, & grandes turbae, quas de eo dederunt Viri docti, ipsius volumen videbantur postulare, sed remota ambitione sufficiat dixisse & forte absolvisse, quod res est.

F I N I S.

CON-

CONSPECTUS CAPITUM.

CAP. I. **D**ominium rerum coepisse ex naturali possessione, & quare. Quâ illa jus praecipuum dederit? Ex Naturae regula dominium & possessionem in eadem causa esse; hac remissa illud quoque remitti. Vestigium hujus Juris remansisse in iis, quae usu Civitatis in dominium redacta non sunt. *Explicatae* l. 1. §. 1. ff. de Acq. rer. dom. l. 14. §. 1. eod. l. 5. §. 1. & l. 6. pr. ff. de Rer. divis. *Vetus occupatio quid praestiterit; quid nova praestet?* Ultra detentionem corporalem dominium non extendi nisi ex conventionem. Eam esse Civium in quaque Civitate. *Dominia citra possessionem non videri rata nisi ex solo Jure Civili.* D. Augustinus in hanc sententiam assertus Cap. I. *Caus. XXIII. Quaest. VII. & Cap. I. Distinct. VIII.* Si res mea sine me extra Civitatem meam reperiatur, occupanti cedere. *Auctores nostros etiam ea Jurisprudencia uti* in l. 5. §. 2. & l. 7. pr. ff. de Capt. & postlim. revers. *Non alia ratione haec subsistere, quam quod communis nostrae Civitatis sponsio Gentibus exteris non praejudicet. Secus se rem habere, si amicitia inter Gentes sit contracta, & quam ob rem.* Turci quâ eo quoque Jure nitantur. *Enarratur privilegium, quod Achmet anno MDCCXII. Belgis dedit. In causa liberorum hominum videri tamen eum peccare, defenso circa id Pomponio in d. l. 5. §. 2. ff. de Capt. & postl. revers. quin & Turcorum Imperatore secundum principia religionis suae. Quibus foederibus recessum videatur a communione rerum non possessorum. Illustrata Galli sententia apud Festum. Inter Gentes tantum non omnes ejusmodi foedera intercedere. Hinc Juri Gentium attribui dominiorum distinctionem in l. 5. ff. de Just. & Jur. Marci Tullii locus Lib. I. de Offic. C. 21. in rem praesens*

sentem deducitur, & varie cum emendatur, tum explicatur. Communionem antiquam fuisse quam perperam negetur. De secessu ab illa communionem Grotium non satis recte disputasse videri. Originem dominii aequae ab utilitate, atque a necessitate repetendam esse. Argumenta in eam rem. Ex vetusta apprehensione nihil esse juris tam in adipiscendo, quam retinendo rerum dominio, nisi animo simul & corpore perpetuo iis incumbamus. Ex lapsis in Grotium. Objectiones Thomasi & Titii contra ea, quae de origine dominii disputavi, expenduntur.

CAP. II. *Nihil relictum fuisse in medio, quod haberi potuit separatim. Terris occupatis an & quod mare potuerit occupari. Veteres duntaxat oras legisse; neque aliud igitur mare tenuisse, quam quod terris erat proximum. Id sibi proprium quaesivisse, si is fuerit occupantium & possidentium animus. Dominium maris proximi non esse aestimandum ex regula l. 3. § 1. ff. de Acq. vel amitt. poss. & cur ita? Eousque illud praecipuum haberi, quousque revera possideatur. Quemadmodum possideatur continua navigatione? quemadmodum possessum intelligatur imperio continentis? in tantum possessionem videri porrigendam, in quantum mare e terra potest haberi subditum. Periculosae definitionis esse, quousque id praecise videatur extendendum. Priscos juris magistros varie hic ballucinari: nec minus Philippum II. Hispaniarum Regem in Legibus nauticis, Belgio datis anno MDLXIII. Sententiam de eo, quo e terra potest prospici, nec certam esse, nec justam. Potestatem terrae proprie finiri, ubi finitur armorum vis. Mare igitur nunc intelligi subditum, quousque tormenta exploduntur. Ea mente usos videri Ordines foederati Belgii in decreto anni MDCLXXI. 3. Jan. quod expenditur & laudatur.*

CAP. III. *Mare exterum quid appellem. Possesse & ejus*
TOM. IV. *G g g domi-*

dominium quaeri occupatione, & servari possessione perpetua. Utraque quomodo peragatur. Si hac excedimus, excedi dominio, & mare in causam pristinam reverti. Etiamnum se ita rem habere inter diversos Principes, non inter subditos ejusdem Civitatis, vario argumento evincitur. Aliud esse, si inter Principes convenerit, dominium maris citra possessionem fore ratum. Nihil ejusmodi intervenisse, neque inter Populos, alioquin foederatos, amicos, socios, intervenisse posse fingi. Rationes ejus rei expediuntur. Mare desertum corpore possideri, quamvis non animo, quod rursus sit commune. Etiam Grotium id largiri, sed minus recte probasse. Exterum mare occupari, si, cum vacuum sit, eo animo intratur. Mare vacuum quid sit. Occupandi animus quis intelligatur, & quotusquisque sit, qui huc non pertineat. De animo constare, si quis, ut dominus, mare occupet, & ut dominus, occupatum tueatur. Ita Romanorum aliquando fuisse mare Mediterraneum. Imperio id suo perfecte fuisse complexos; ad haec possedisse quaterna classe, & potestate fretorum Herculei & Thracii. Late haec exiguntur ad jus domini. Romanos & freti Britannici fuisse dominos. Alibi in Oceano nihil juris habuisse. Praecipuum in mari jus non quaeri praecipua armorum classis, etque potentia. Possessionem inermem sufficere, & quam vel una scapha tuetur. De jure vel injuria cum occupationis, tum possessionis. De classibus armatis quod diximus, quae sit referendum.

CAP. IV. Regulas de acquirenda vel amittenda possessione Jure Naturali & Civili fere easdem esse. Possessionem tamen solius animi defendere Legem Civilem, non Legem Naturae. In usu consistere possessionem, imo ipsum esse usum. Hinc sola navigatione eam absolvi, si mare sit exterum. Seldenum & Strauchium minus recte constituere, etiam aliis, qui recitantur, modis possessionem maris servari. Disputationis nostrae ea de re conjectio. Omnia nunc maria occupanti cedere, ut
res

res nullius. Ea quoque, quae sibi hodie nonnulli Principes adscribunt. Nullum dari mare, quod perpetua detentione custoditur. Solam mentem & affectionem domini non sufficere retinendo imperio. De Anglis & Venetis εν παρόδω. Occupatio maris & possessio quid praestet. Grotio non esse concedendum, imperium in eo acquiri, proprietatem non acquiri, & quam ob causam. Quae haec differant in Civitate, & in mari occupato differre queant, nec tamen differant unquam. Maris occupati eam videri proprietatem esse, qualem Jcti solent describere optimam maximam. Causam dominii maritimi qui effectus sequantur, enumeratur. Maris dominum posse ejus navigatione interdicare vel pure, vel sub conditione. Utriusque modi exempla. Transitum vel innoxium terra marique prohiberi posse contra Grotium. Qui fretis imperat, recte tributa imperare transeuntibus. Danorum Reges eo jure uti in freto Baltici maris. Suedis in eo nihil juris esse, & quare. Hispanos forte Gaditanum fretum sibi aliquando subje-cturos esse, & quomodo. Dominum maris jure praescribere salutationem & salutandi modum. Ordinum Hollandiae aequissimum Decretum de salutanda arce Kronenburg. Minus aequa constitutio Philippi II. de non submitiendo navium Hispanarum primo aplustri. Ducis Florentini iniqua conditio, illata ab Praefecto classis Franciae anno MDCCLXVIII. Quamobrem haec nullo jure subsistant, & unde proficiantur

CAP. V. Nullum hodie mare teneri ditione alicujus Principis. Anglos contradicere, & eorum causam in primis egisse Seldenum. Qui Britanniae imperitarunt, ad sua usque tempora mare Britannicum insedisse quae probandum receperit, sed non probavit De priscis Britannis quam laboraverit incassum. Solam navigationem vel piscationem adserendo imperio non

esse idoneam. Locum quemdam Solini obtorto eum collo buc raperre. Nihil quicquam constare de animo & dominii destinatione in illa aetate. Perperam haec educi ex Caesare Julio de Bello Gall. Lib. I. C. 5. & quae ejus vera sit sententia. Seldeni argumenta colliguntur per satyram, atque ita iis quoque respondetur. Animi corporisque possessionem unice esse probandam. Hanc non negari aliquando fuisse penes eos, qui Britanniae potiti sunt. De Romanis exemplum. Aliud de Edgardo Rege, sed quid circa illud Seldeno possit reponi. Nihil protulisse videri, quod praesentem possessionem arguat. Quicquid veteris aevi sit, nullam hodie vel classem vel navem esse, quae Populi Anglicani nomine mare Britannicum navigat. Ne quidem in freto, quod Franciam Angliamque interest, Anglis quicquam esse juris ultra potestatem continentis. Qua ratione id neget Temple. Refutatur is affatim. Auctoritates, quae utitur Seldenus, nullas esse. Ut ut tamen sint, ab errantium testimoniis dominium maris arcessendum non esse. In rebus cosmographicis Scriptores externos saepius peccasse. Argumento esse Geographum Arabem apud ipsum Seldenum; etiam Zosimum variis locis. Veras marium appellationes nihil quoque juris tribuere. De freto Gallico observatio in hanc rem. Gentes, quae maritimo Anglorum imperio testimonia dederunt, sibi, non aliis, praejudicare. Quae & quando testimonia heic valeant. Franci num id sint professi? num faederati Belgae? Pacis pactioes, quae his cum Anglis intercedunt, excutuntur. Habere nos Regiis Britannorum navibus, ut Principi, reverentiam. Illorum maritimum imperium minime eo agnitum videri. Explicatur §. 4 Pacis anni MDCLXXIV. Regis Anglici Majestatem comiter conservamus, & quare. Sine macula

la nominis Belgici posse id ipsum & Francis dari. Quam nullo tamen jure de eo sibi blandiantur Angli.

CAP. VI. *Venetos sibi adscribere maris Adriatici dominium. Graswinckelium id negare, sed, ut semper alias, nihil agere. Quid pro Venetorum causa dictum sit, & porro dici posset. Ex regulis de origine dominii rem esse finientiam. Secundum has Adriatici non esse dominos, nisi qua possident. Non videri nunc possidere, nisi has maris partes, quibus ex continenti imperant. Possessionem, quae sit dicis causa per desponsationem maris annuam, procul hinc habendam esse. Nullam navem, naviculam, scapham, cymbam in Adriatico navigare ad tuendam ejus possessionem. Promiscuas navigationes non sufficere, & qua de causa. Julium Pacium aliosque pro Venetis in primis advocare praescriptionem longi temporis. Ea expellitur, si inter diversos Principes res agatur. Grotii quaedam nutatio. Quamvis praescriptio obtinere queat inter distincta invicem imperia, attamen ratione maris id admittendum non esse. Quin nec ex Edicto Praetoris eam hic procedere. Deesse possessionem, & magis eam, cujus non exstet memoria. Grotius & Vasquius quid ea de re recte, quid secus videantur statuisse. Pro dominio maris Ligustici Genuensium partes egisse Burgum. Hunc fere eadem dixisse, quae pro Anglis & Venetis alii. Quia Genuenses mare suum videantur possidere, nec tamen, ut nunc est, possideant. Haec cur ita sint, prolixè enarratur. Injuria Francorum Regem mare Mediterraneum sibi adrogare. Qua ratione sit summovendus.*

CAP. VII. *Belgas, usu maris & fructu contentos, nullius imperium sibi vindicare. Maribus tamen fretisque proximis semper imperasse. Qui & quare mari Australi dominati sit, & adhuc dominantur. Philippi Burgundi*

privilegium in eo datum *Amsterdammensibus*, & exortae circa id turbae. Etiam *Frisios* turbasse, & quemadmodum ea res sit composita. *Maximiliani* privilegium, quo *Euchusanis* in mari territorium dedit per milliare quadratum. Potestatem continentis ibi accipi ἐν πλάτει. Alia ejus locutionis exempla apud *Dionem Chrysostomum* de *Augusto*, ut & de *Ballivio* aquarum in *Consuetud. Middelburg*. Cur ea latitudo videatur placuisse, & quam ita res intricetur. *Vastum Oceanum* possideri non posse. Omnes omnium *Principum* naves ei rei non sufficere. Ne mare *Atlanticum* quidem recte classibus custodiri. Hoc sibi adscribere *Lusitanos*. Quin *Hispanos* sibi, ut vulgo fertur, univ^{er}sum Oceanum. Ne hoc verum sit, eorum tituli varie explicantur & interpunguntur. Jure utique neminem univ^{er}sum Oceanum in dominium transcribere posse, partem posse, & quid ita. *Castellanos* ab utroque latere Oceani possidere, nec quicquam id iis prodesse. Ultra columnas *Herculis* nihil juris fuisse *Romanis*. Oceanum eorum imperio excludi apud *Virgilium* & *Livium*. Apud alios si subditus proponatur, Oceanum fere *Britannicum* intelligi. Nullam hodie Oceani partem a quoquam possideri. Ex eo solo contra *Lusitanos* asserta libertas navigandi ad *Indiam* Eoam. *Grotii* longum molimen, & rationes in hanc rem non satis aptae. Quod mare appellemus liberum, quod clausum, brevis enarratio.

CAP. VIII. *Veteres Auctores* maris dominium nunc adfirmare, nunc negare. His illisve quatenus tribuendum videatur. Pro imperio maritimo qui loca congefferint. Alia ex aliis, quae indicantur; alia, quae recitantur ex *Herodiano*, Ἀθωλογία variis locis, *Lucano*, *Claudiano* &c. Inscriptio quaedam *Thyatirena*; & cur hanc repraesentemus. Non deesse etiam, qui pro libertate maris testimonia dixerint; sed qui pro dominio, semper vincere, seu numeremus sententias, seu pondere-mus. Auctoritates pro mari subdito quandoque suspectas esse. Qui id sit discernendum. Locus *Dionysii Halicarnassensis* de *Romanorum* imperio maritimo postulatur falsi. Quomodo, quando & quousque illi mari-bus imperaverint. Secundum haec *Scriptorum* testimonia esse intelligenda vel refutanda. Exempli *Gentium*, quae maris potitae sunt. *Casauboni* obiectio de vocabulo θαλασσοκρατεῖν. Late defenditur aliquando id usurpari ad denotandum maris imperium. Non promiscue tamen admitienda esse illa *Gentium* praejudicia. Obscuritatem veteris aevi in causa esse, quominus liquido de his pronuncietur, & quam ob rem. De Ro-

Romanis, illustri alioquin Populo, ne quidem praecise constare. Quaestionem ejus rei unice verti in facto.

Cap. IX. Grotium modo simpliciter negare, mare dominio subjici posse, modo id concedere de parte maris, qua proximi, qua exteri. Qui ipse partem illam definiat, nec proprietatem in ea, sed imperium largiatur. Ex his cur nihil omnino videatur subsistere. Quare illa sententia Grotio placuerit. Excutiuntur ejus rationes ab Jure Naturali petitae. An mare, quod omnibus sufficiat, propterea nequeat occupari? A pristina communione recessum esse necessitate imperante, & utilitate suadente. Utilitatem a Grotio minus recte transmitti. Mare magis esse utile, si mihi soli prodest, quam si omnibus. Alia Grotii ratio, quod maris non sit terminus, neque adeo dominium. Huic occurritur, & probatur eundem esse dominii terminum, qui possessionis, & ecquis ille sit. Alia rursus Grotii ratio, quod mare nequeat possideri ob fluxam ejus & instabilem naturam. Varie ea refutatur, appposito de fluminibus exemplo. Littora quoque dici communia, nec tamen esse sine termino vel naturae vagae rapidaeque. De naturali commerciorum libertate & facultate transeundi quae dicuntur, nulla esse. In Jure Gentium nihil quicquam reperiri, quod adversetur maris dominio. Juris Romani auctoritas an & quatenus heic valeat. Illius Juris consultos passim ingeminare, mare esse commune. Loca in hanc rem. Qui haec accipiant assertores dominii maritimi. Nobis videri, non alia ratione mare vocari commune, quam quod occupatum non erat vel possessum. Verum id esse de Oceano, & quomodo ille κατ' ἐξοχὴν dicatur mare. Quin & aetate Victorum nostrorum verum videri de mari Mediterraneo. Nonnihil difficultatis ex l. un. C. de Classic. movetur & removetur. Maris jus proprium ad aliquem pertinere posse ex Libris nostris probatur. Etiam Grotium id agnovisse, sed mox varie tricatum esse. Occupatio maris & a populo & a privato qui procedat. Littorum eandem esse, quae maris, causam. Neque haec communia appellari, quam quae occupata non sunt. Posse tamen in dominium redigi, & redacta esse nonnunquam. Quae Auctores nostri de his dixerint, adferuntur & exponuntur. Ut & quae ipsi ex condicto tradidere de non impediendo maris usu, explicitis circa haec variis capitibus Juris in l. 50. ff. de Acquir. rer. domin. l. 2. §. 8. & 9. l. 3. §. 1. l. 4. ff. Ne quid in loc. pub. l. 13. §. ult. l. 14. ff. de Injur. l. 1. §. 27. ff. de Flumin. &c. Grotium & Interpretes tantum non omnes perperam ea in-

intellexisse videri. Possessionem & maris & littorum etiam Jure Romano dominium unice dare, unice defendere. Ex Basilicis illustratur l. 14. §. 1. ff. de Acq. rer. dom. Mendosame l. 45. ff. de Usurp. & usuc. Haec restituitur, in rem praesentem explicatur, & porro componitur cum l. 7. ff. de Divers. temp. praescript. Epilogus de tantulo rei tantae compendio.

F I N I S.



ERRATA IN EDITION OF 1744

PAGE	LINE	FOR	READ
352	31	<i>genere</i>	<i>gerere</i>
353	18	<i>proprie</i>	<i>propriae</i>
354	29	<i>XXXIII</i>	<i>XXIII</i>
355	19	<i>L. I.</i>	<i>C. I.</i>
356	8	<i>Pomoponii</i>	<i>Pomponii</i>
356	31	<i>vacula</i>	<i>vacua</i>
360	7	<i>insultae</i>	<i>insulae</i>
371	25	<i>Mario</i>	<i>Maris</i>
372	4	<i>quid</i>	<i>qui</i>
372	10	<i>esse</i>	<i>esse;</i>
373	17	<i>Antiquorum</i>	<i>Antiquorum</i>
373	23	<i>VIII</i>	<i>VII</i>
376	8	<i>caetris</i>	<i>ceteris</i>
376	13	<i>L. II</i>	<i>C. II</i>
376	28	<i>rempora</i>	<i>tempora</i>
382	6	<i>videbitnr</i>	<i>videbitur</i>
387	11	<i>jute</i>	<i>jure</i>
389	26	<i>huminum</i>	<i>luminum</i>
392	15	<i>& Herculeo, quorum po- testate Romani circum- fuso</i>	<i>mari Mediterraneo, quodque ipsum circumfuso</i>
395	11	<i>Serveri</i>	<i>Severi</i>
398	5	<i>Occani</i>	<i>Oceani</i>
400	2	<i>τῆς</i>	<i>τῆς</i>
407	15	<i>illo</i>	<i>illa</i>
407	24	<i>quiu</i>	<i>quin</i>
409	11-12	<i>Soldenus</i>	<i>Seldenus</i>
410	7	<i>esseconstituendam</i>	<i>esse constituendam</i>
410	30	<i>apetre</i>	<i>aperte</i>
411	1	<i>Prudentia</i>	<i>Prudentes</i>
411	20-21	<i>inquemquam</i>	<i>in quemquam</i>
414	26	<i>aedeficio</i>	<i>aedificio</i>
414	30	<i>aliisque</i>	<i>aliique</i>

INDEX OF AUTHORS CITED

[The references in the text, with very few exceptions, have been verified in the original sources. All of the authors cited by Bynkershoek have been included in this list as showing the range of his erudition.]

- | | |
|---|---|
| <p>Achmet I (1590-1517), Emperor of the Turks, grants exemption to Netherlands from law of confiscation, 355-6.</p> <p>Ahmed I, <i>see</i> Achmet I.</p> <p>Aitzema, Lieuwe van (1600-1669), on precedence in saluting at sea, 376.</p> <p>Alcaeus of Messene, in support of sovereignty over the sea, 395-6.</p> <p>Alphaeus of Mitylene, in support of sovereignty over the sea, 395-6.</p> <p>Antoninus, <i>see</i> Aurelius Antoninus.</p> <p>Augustine, St., on ownership, 354.</p> <p>Aurelius Antoninus, Marcus, Emperor, in support of sovereignty over the sea, 397.</p> <p>Bachovius, Reinhart (b. 1575), 412.</p> <p>Basilica, Greek code of law, on the common use of the unoccupied shore, 414.</p> <p>Bodin, Jean (1530-1596), on the extent of marginal seas, 364.</p> <p>Borgo, Pietro Battista (fl. 1633), on evidence in support of sovereignty over the sea, 395, 399.</p> <p> on the Genoese claim of sovereignty over the Ligurian Sea, 388-9.</p> <p> opposed by Graswinckel, 384.</p> <p>Burgus, <i>see</i> Borgo.</p> <p>Caecilius, Roman jurist, 357.</p> <p>Caesar, Caius Julius, in support of sovereignty over the sea, 378.</p> <p>Caepolla, Bartholomaeus (d. 1474), on navigation as the basis of possession of the sea, 371.</p> <p> on the Venetian claim of sovereignty over the Adriatic Sea, 390.</p> <p>Casaubon, Isaac (1559-1614), 399.</p> <p>Castor of Rhodes (fl. c. 150 B. C.), in support of sovereignty over the sea, 398.</p> <p>Catullus, 407.</p> <p>Celsus, P. Juventius (2d century), Roman jurist, 411.</p> <p> on the common use of the sea, 405, 411-12.</p> | <p>Cicero, Marcus Tullius, on maritime trade, 386.</p> <p> on ownership, 356-7.</p> <p>Claudianus, Claudius, in support of sovereignty over the sea, 396.</p> <p>Code, <i>see</i> Corpus Juris Civilis.</p> <p>Corpus Juris Civilis:</p> <p> Code, 371, 408.</p> <p> Digest, 352-7, 360-3, 367-9, 383, 397, 403, 405-6, 409-14.</p> <p> Institutes, 405.</p> <p>Cujas, Jacques (1522-1590), 357, 415.</p> <p> on possession, 371.</p> <p>Decretum Gratiani, 354-5.</p> <p>Digest, <i>see</i> Corpus Juris Civilis.</p> <p>Dio Chrysostom, 390.</p> <p>Dionysius of Halicarnassus, in support of Roman claim of sovereignty over the sea, 397-8.</p> <p>Dionysius Periegetes, on the common use of the ocean, 393.</p> <p>Doneau, Hughes (1527-1591), 415.</p> <p>Duaren, Francois (c. 1509-1559), 415.</p> <p>Eusebius, Pamphilus (264-c. 349), Bishop of Caesarea, in support of sovereignty over the sea, 398.</p> <p>Eynde, Jakob van den (1575-1614), 381.</p> <p>Festus, Sextus Pompeius, 356.</p> <p>Gaius (fl. 138-161), Roman jurist, 354.</p> <p> on the common use of the unoccupied shores, 414.</p> <p>Gallus, C. Aelius, 356.</p> <p>Gellius, Aulus, 357.</p> <p>Godefroy, Jacques (1587-1652), on evidence in support of sovereignty over the sea, 395.</p> <p>Goeddaeus, Johannes (1555-1632), 354.</p> <p>Gothofredus, <i>see</i> Godefroy.</p> <p>Graswinckel, Dirk (1600-1666), against the Venetian claim of sovereignty over the Adriatic Sea, 384.</p> |
|---|---|

[Figures refer to pages of original in outer margin of translation.]

- Graver, Theodore, on the origin of ownership, 359-61.
- Grotius, Hugo (1583-1645), 412, 415.
 on dominion of the sea, 401-4.
 on evidence in support of sovereignty over the sea, 395, 397, 399.
 on evidence opposed to sovereignty over the sea, 397.
 on the non-acquisition of ownership with command of the sea, 373, 401-2.
 on the non-acquisition of sovereignty with long possession, 386-7.
 on occupation of the high sea, 367, 409.
 on the origin of ownership, 358-9.
 on the Portuguese claim of sovereignty over the sea, 393.
 on the prohibition of transit on land and sea, 374.
 on the Spanish claim of sovereignty over the sea, 391.
 on treaties limiting armaments, 382.
- Gryphiander, Johann (d. 1652), on the extent of marginal seas, 364.
 on navigation as the basis of possession of the sea, 371.
- Hanno (c. 500 B. C.), Carthaginian navigator, 367.
- Hermogenianus, Roman jurist, 356.
- Herodian (3d century), on evidence in support of sovereignty over the sea, 395.
- Hieronymus of Brescia, on the extent of marginal seas, 364.
- Horace, 352-3, 361-2, 365, 376, 384-6, 402, 413.
- Institutes, *see* Corpus Juris Civilis.
- Javolenus, Priscus, Roman jurist, 369, 407.
- Julian, Salvius (b. c. 100), Roman jurist, 363.
 on ownership, 367.
- Lambin, Denis (1516-1572), 357.
- Livy, on the exclusion of the ocean from the sovereignty of the Romans, 392.
- Lucan, Marcus Annaeus, in support of sovereignty over the sea, 396.
- Lycklama, 354, 357.
- Lycophron, 400-1.
- Maecianus, Lucius Volusius (2d century), Roman jurist, 352, 368.
- Malmesbury, William of (c. 1095-c. 1143), in support of sovereignty over the sea, 379.
- Marcianus, Aelius (d. 217), Roman jurist, 354.
 on the common use of the sea, 405-6, 408.
 on the common use of the unoccupied shores, 410, 414-15.
- Meurs, Jan de (1579-1639), on the maritime dominion of the Cretans, Cyprians and Rhodians, 399.
- Mevius, David, 361.
- Middelburg Consuetudines, 390.
- Neratius Priscus, Roman jurist, 354.
 on the common use of the unoccupied shores, 410, 414.
- Nerva Cocceius (d. c. 33), Roman jurist, on ownership of property, 353-4.
- Ovid, 362, 365, 392.
- Pacius, Julius (1550-1635), on the extent of marginal seas, 364.
 on the Venetian claim of sovereignty over the Adriatic Sea, 386.
- Palatius, *see* Palazzi.
- Palazzi, Giovanni (b. 1640?), on the Venetian claim of sovereignty over the Adriatic Sea, 384.
- Papinian, Aemilius (2d century), Roman jurist, on the use of public property, 414.
- Paulus, Julius (d. c. 235), Roman jurist, 353-4, 357, 362, 403, 411.
 on ownership, 367.
 on *uti possidetis* as applied to the sea, 409, 413.
- Philip II, King of the Spains, on precedence in saluting at sea, 375-6.
 on the prohibition of fighting by foreigners in marginal seas, 364.
- Philo Judaeus, on evidence in support of sovereignty over the sea, 395.
- Plato, on community of ownership, 358.
- Pliny, 364.
- Plutarch, in support of the Lacedaemonian claim of sovereignty over the sea, 399.
- Polybius, on evidence in support of sovereignty over the sea, 395.
- Pomponius, Sextus, Roman jurist, on occupation of the sea, 410.
 on property ownership, 355-6, 360-1.
 on the use of public property, 412.
- Proculus, Roman jurist, on difference between subjection and courtesy, 383.
 on property ownership, 355, 360, 367.
- Pseudo-Seneca, 361.
- Scaevola, Quintus Cervidius, Roman jurist, 412.

[Figures refer to pages of original in outer margin of translation.]

- Scaliger, Joseph Juste (1540-1609), 369.
- Selden, John (1584-1654), on the extent of marginal seas, 364.
on evidence in support of sovereignty over the sea, 395, 397-9, 405.
on ownership of the British Sea, 376-84, 392.
on the Portuguese claim of sovereignty over the sea, 391.
on possession without navigation, 371.
on the Roman claim of sovereignty over the sea, 409.
on the Spanish claim of sovereignty over the sea, 391.
- Seneca, Lucius Annaeus, on the difference between command and ownership, 373.
- Solinus, Caius Julius (3d century), in support of acquiring sovereignty over the sea, 377.
- Statius, P. Papinius, in support of sovereignty over the sea, 396.
- Stephanus, Robert (1503-1559), 414.
- Stobaeus, Joannes (5th century), in support of sovereignty over the sea, 395.
- Strauch, Johann, 403.
on possession without navigation, 371.
- Tacitus, 394.
- Temple, Sir William (1628-1699), on sovereignty of English over English Channel, 380.
- Thomasius, Christian (1655-1728), on the origin of ownership, 359-61.
- Titius, Gottlieb Gerhard (1661-1714), on the origin of ownership, 361.
- Turnebus, Adrien (1512-1594), 357.
- Ulpian, Domitius (170-228), Roman jurist, 354, 357.
on acquisition of ownership by occupation, 411.
on the common use of the sea, 406, 408, 412-13.
- Valens, Emperor, 408.
- Vázquez Menchaca, Fernando (d. 1569?), on the acquisition of sovereignty with long possession, 386-7.
on the Spanish claim of sovereignty over the sea, 391.
- Vergil, 385.
on the exclusion of the ocean from the sovereignty of the Romans, 392.
- Voss, Isaac (1618-1688), 408.
- Welwod, William (1578-1622), 384, 403, 405.
- Wheler, Sir George (1650-1723), in support of sovereignty over the sea, 396-7.
- Zosimus (5th century), 381.

[Figures refer to pages of original in outer margin of translation.]

THE CLASSICS OF INTERNATIONAL LAW

This series, which includes the classic works connected with the history and development of international law, was undertaken by the Carnegie Institution of Washington in 1906, at the suggestion of Mr. James Brown Scott, then Solicitor for the Department of State, under whose supervision as General Editor the series has since been published. On January 1, 1917, the project was transferred to the Carnegie Endowment for International Peace and the publication of the series is being continued by the Endowment's Division of International Law, of which the General Editor of the Classics is the Director.

The republication of these classics has been undertaken principally on account of the difficulty of procuring the texts in convenient form for scientific study. The text of each author is reproduced photographically, so as to lay the source before the reader without the mistakes which creep into a newly printed text. An introduction is prefixed to each work, giving the necessary biographical details concerning its author and stating the importance of the text and its place in international law. Tables of errata in the original are added when necessary, and notes to clear up doubts and ambiguities or to correct mistakes in the text are supplied. Each of the Classics is specially edited by an expert in international law and is accompanied by an English version made expressly for the series by a competent translator.

The following works have appeared and are now on sale. The price is indicated for each work. They can be obtained by remittance to the publishers, either the Clarendon Press, Oxford, England, or the Oxford University Press, American Branch, 35 West 32d Street, New York, N. Y., who are the regular selling agents for the Clarendon Press in this country.

Ayala, Balthazar: De Jure et Officiis Bellicis et Disciplina Militari. Edited by John Westlake. 2 vols. Washington, 1912. [No. 2 of the series.] Price, \$7.00.

Vol. I. A Photographic Reproduction of the Edition of 1582, with portrait of Ayala, Introduction by John Westlake, etc. xxvii+226 pages.

Vol. II. A Translation of the Text, by John Pawley Bate. xii+250 pages.

Bynkershoek, Cornelius van: De Dominio Maris. 1 vol. New York, 1923. 108+80 pages. [No. 11 of the series.] Price to be announced.

1. Introduction by James Brown Scott.

2. A Translation of the Text, by Ralph Van Deman Magoffin.

3. A Photographic Reproduction of the Edition of 1744.

4. An Index of Authors Cited and a List of Errata in the 1744 edition, by Herbert F. Wright.

Gentili, Alberico: Hispanicae Advocacionis Libri Duo. 2 vols. New York, 1921. [No. 9 of the series.] Price, \$5.00.

Vol. I. A Photographic Reproduction of the Edition of 1661, with an Introduction by Frank Frost Abbott and a List of Errata. 44a+xvi+274 pages.

Vol. II. A Translation of the Text, by Frank Frost Abbott, with an Index of Authors prepared by Arthur Williams. 12a+x+284 pages.

Legnano, Giovanni da: De Bello, De Repraesaliis et De Duello. Edited by Sir T. Erskine Holland. 1 vol. Oxford, 1917. xxxiii+458 pages. [No. 8 of the series.] *Out of print.*

1. Collotype of the Bologna Manuscript of *circa* 1390, with Extended and Revised Text of Same, Introduction, List of Authorities Cited, etc., by Sir T. Erskine Holland, together with Photograph of Legnano's Tomb.

2. A Translation of the Text, by J. L. Brierly.

3. A Photographic Reproduction of the First Edition (1477).

Rachel, Samuel: De Jure Naturae et Gentium Dissertationes. Edited by Ludwig von Bar. 2 vols. Washington, 1916. [No. 5 of the series.] Price, \$4.00.

Vol. I. A Photographic Reproduction of the Edition of 1676, with portrait of Rachel, Introduction by Ludwig von Bar, and List of Errata. 16a+x+335 pages.

Vol. II. A Translation of the Text, by John Pawley Bate, with Index of Authors Cited. 16a+iv+233 pages.

Textor, Johann Wolfgang: Synopsis Juris Gentium. Edited by Ludwig von Bar. 2 vols. Washington, 1916. [No. 6 of the series.] Price, \$4.00.

Vol. I. A Photographic Reproduction of the First Edition (1680), with portrait of Textor, Introduction by Ludwig von Bar, and List of Errata. 28a+vi+148+168 pages.

Vol. II. A Translation of the Text, by John Pawley Bate, with Index of Authors Cited. 26a+v+349 pages.

Vattel, E. de: Le Droit des Gens. 3 vols. Washington, 1916. [No. 4 of the series.] Price, \$8.00.

Vol. I. A Photographic Reproduction of Books I and II of the First Edition (1758), with portrait of Vattel and Introduction by Albert de Lapradelle. lix+541 pages.

Vol. II. A Photographic Reproduction of Books III and IV of the First Edition (1758). xxiv+376 pages.

Vol. III. A Translation of the Text, by Charles G. Fenwick, with translation (by G. D. Gregory) of Introduction by Albert de Lapradelle. lxxxviii+398 pages.

Victoria, Franciscus de: Relectiones: De Indis and De Iure Belli. Edited by Ernest Nys. 1 vol. Washington, 1917. 500 pages. [No. 7 of the series.] Price, \$3.00.

1. Introduction by Ernest Nys, and Translation of Same, by John Pawley Bate.

2. A Translation of the Text, by John Pawley Bate.

3. Revised Text, with Prefatory Remarks, List of Errata, and Index of Authors Cited, by Herbert F. Wright.

4. A Photographic Reproduction of Simon's Edition (1696).

Zouche, Richard: Juris et Judicii Feialis, sive, Juris inter Gentes, et Quaestionum de Eodem Explicatio. Edited by Sir T. Erskine Holland. 2 vols. Washington, 1911. [No. 1 of the series.] Price, \$4.00.

Vol. I. A Photographic Reproduction of the First Edition (1650), with Introduction, List of Errata, and Table of Authors, by Sir T. Erskine Holland, together with portrait of Zouche. xvi+204 pages.

Vol. II. A Translation of the Text, by J. L. Brierly. xvii+186 pages.

(In Press)

Gentili, Alberico: De Legationibus Libri Tres. [No. 12 of the series.]

1. Introduction by Ernest Nys.

2. A Translation of the Text, by Gordon J. Laing.

3. A Photographic Reproduction of the Edition of 1594.

Grotius, Hugo: De Jure Belli ac Pacis. [No. 3 of the series.]

1. A Translation of the Text, by Francis W. Kelsey, with the assistance of Henry A. Sanders and Arthur E. Boak.

2. A Photographic Reproduction of the Edition of 1646.

Pufendorf, Samuel von: De Officio Hominis et Civis Juxta Legem Naturalem Libri Duo. [No. 10 of the series.]

1. Introduction.

2. A Translation of the Text, by Frank Gardner Moore.

3. A Photographic Reproduction of the Edition of 1682.

Wolff Christian von: Jus Gentium Methodo Scientifica Pertractatum.

1. Introduction by Otfried Nippold, and Translation of Same by Francis J. Hemelt.

2. A Translation of the Text, by Joseph H. Drake.

3. A Photographic Reproduction of the Edition of 1764.

B 995

18962

INKERSHOEK, CORNELIUS VAN

AUTHOR

De Dominio Maris Dissertatis

TITLE

[illegible]

18962

